

No. 12555

United States
Court of Appeals
for the Ninth Circuit.

LEONARD WOYNICZ, Also Known as Leonard
Woynicz Sianozecki,

Appellant,

vs.

ALEXANDRA WOYNICZ, also known as Alex-
andra Woynicz Sianozecki,

Appellee.

Transcript of Record

Appeal from the United States District Court,
Southern District of California,
Central Division.

FILED
AUG 19 1950

PAUL P. O'BRIEN, *clerk*

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

For Appellant:

JERRY B. RISELEY,
812 Bartlett Bldg.,
215 West Seventh St.,
Los Angeles 14, Calif.

For Appellee:

DANIEL A. WEBER,
208 S. Beverly Drive,
Beverly Hills, Calif.

In the District Court of the United States, Southern District of California, Central Division

No. 9324 PH

ALEXANDRA WOYNICZ, Also Known as
ALEXANDRA WOYNICZ SIANOZECKI,
Plaintiff,

vs.

LEONARD WOYNICZ, Also Known as LEONARD WOYNICZ SIANOZECKI,
Defendant.

SUBSTITUTION OF ATTORNEYS
(Defendant)

Defendant hereby substitutes Jerry B. Riseley as his attorney of record in place of L. J. Styskal and Jerry B. Riseley.

Dated Nov. 4, 1949.

/s/ LEONARD WOYNICZ.

We consent to the above substitution.

Dated Nov. 7, 1949.

/s/ L. J. STYSKAL.

/s/ JERRY B. RISELEY.

Above substitution accepted.

Dated Nov. 8, 1949.

/s/ JERRY B. RISELEY.

Affidavit of Service by Mail attached.

[Endorsed]: Filed November 9, 1949.

EXHIBIT "A" TO ORIGINAL COMPLAINT

Whereas, the wife wishes to discontinue and terminate the aforementioned action; and

Whereas, it is the intention of the parties to continue to live separate and apart forever, and in view of their irreconcilable estrangement the husband desires to make provisions for the support and maintenance of the wife, and for the custody, support and maintenance and education of Robert;

Now, Therefore, in consideration of the premises and the mutual promises and undertakings herein contained, the parties agree:

First

This agreement shall take effect as of August 23rd, 1942, and continue for the natural lives of both parties, unless previously terminated by the occurrence of any one or more of the following:

- a. The death of the wife.
- b. The remarriage of the wife.
- c. The granting of a decree of divorce in favor of the husband against the wife by a court of competent jurisdiction in the State of New York provided the granting of such decree is based on the ground that the wife is living in open and notorious adulterous relations.
- d. The repudiation of this agreement by consent of the parties provided said repudiation is in

writing and duly signed and acknowledged by each of the parties hereto.

e. The death of the husband, but nothing herein contained shall be deemed to relieve the estate of the husband from any obligation incurred hereunder by the husband prior to his death.

Second

From the date hereof the parties may and shall continue to live separate and apart for the rest of their natural lives and each shall be free from interference, authority and control, direct or indirect, by the other as fully as if sole and unmarried. Each may, for his or her separate use and benefit, engage in any employment, business or profession which he or she may deem advisable. Each may reside at such place or places as he or she may select.

Third

The wife shall own, have and enjoy independently of any claim or right of the husband, all silverware, pictures, portraits, books, household furniture, china, glassware, rugs, and other household effects of every kind and description now located in the top floor apartment at 2929 Wellman Avenue, Borough of Bronx, City and State of New York, and the garden tools and equipment now located at the aforesaid premises, and also all wearing apparel, personal ornaments, and other per-

sonal property belonging to the wife and now in her possession, or held by her, or which shall hereafter belong or come to her.

Fourth

The husband shall, within six (6) weeks from date hereof, remove from the premises mentioned in the preceding paragraph, all of his personal tools, books and wearing apparel wherever the same may be located.

Fifth

The parties have carefully weighed the question of the custody of Robert. In doing so they have been guided solely by considerations touching upon Robert's welfare. They are convinced that the following disposition will be for the best interests of Robert:

a. The husband shall have the sole custody, control and education of Robert. He shall be responsible and liable for his adequate support, maintenance and education consistent with his financial means, environment, and mode of living.

b. Should Robert desire to live or visit with the wife, at any time or times hereafter, the husband shall not prevent the fulfillment of said desire or desires, and during Robert's said visits or living with the wife, the husband shall remain responsible and liable for his adequate support, maintenance and education consistent with his financial conditions, environment and mode of living.

Sixth

So long as the wife shall fully keep, observe and perform the covenants and conditions to be kept, observed and performed by her under this agreement the husband shall pay to the wife, for her sole support and maintenance, the sum of Fifty (\$50.00) Dollars a week, on the first day of each and every week commencing with August 23rd, 1942, during her natural life, unless this agreement is earlier terminated as herein provided.

Seventh

In consideration of the provisions herein made for her, the wife has simultaneously herewith withdrawn the action for separation which she has heretofore commenced against the husband in the Supreme Court of the State of New York, County of Bronx; and she has likewise withdrawn the motion made in such action for alimony and counsel fees. The counsel fees of the wife, amounting to \$350.00 have been paid simultaneously herewith by the husband to the wife's attorney, Jack Klaw, Esq., of 521 Fifth Avenue, New York City, who has accepted the same in full satisfaction as to the husband's liability for the services rendered by him in connection with the preparation of this agreement and also in connection with the wife's aforesaid separation action.

Eighth

If the husband defaults in the due performance of any of the terms, conditions, and covenants of this agreement on his part to be performed, the wife shall have the right to bring an action either for a legal separation or for support and maintenance, or for both, and in any such action she shall have the right to ask for and obtain temporary and permanent alimony and counsel fees.

Ninth

Unless terminated as in paragraph "First" aforesaid, this agreement shall survive any order for the payment of alimony, temporary or permanent, which may be made in any action which hereafter may be instituted between the parties for separation or divorce, and/or any interlocutory or final judgment or decree in such action granting or denying such alimony, and/or any order modifying such order, judgment or decree in such action, and this agreement shall not be merged in any of the aforementioned orders, judgments or decrees, but shall survive the same.

Tenth

The payments required to be made hereunder by the husband to the wife shall be made by money order or good check and shall be sent by mail to the wife directed to her address above indicated. The wife may from time to time specify other ad-

dresses to which said payments shall be mailed. The husband shall not receive any credit for any payments hereunder unless said payments shall have been actually received by the wife. But no default shall be deemed to have occurred unless the husband shall have failed to cure any such default within five days after the mailing of notice of such default to him by registered mail.

Eleventh

The husband simultaneously herewith, does execute and deliver to the wife, a deed to premises 2929 Wellman Avenue, Bronx, and the lots adjacent thereto now owned by the husband, free and clear of any liens or claims, conveying to the wife a life interest therein with remainder to the children of their marriage, as joint tenants with the right of survivorship. In the event that the taxes, assessments, water rates, water charges and premium for adequate fire insurance affecting said property are not paid when payable and if the same remain unpaid for more than ten (10) days after notice from the husband in writing requesting the wife to pay the same, the husband shall have the right to pay the same and deduct from the weekly payments provided for in paragraph "Sixth" hereof, the sum of Ten (\$10.00) per week until he shall have been completely reimbursed for the payment so made by him.

In the event of any notice of violation or order or demand from any municipal, state or federal

department as may effect the aforesaid premises, then the wife agrees to remove or comply with the same within the reasonable time and upon her failure so to do, the husband shall have the right to remove or comply with the same and shall have the right to deduct from the weekly payments provided in paragraph "Sixth" hereof, the sum of Ten (\$10) Dollars per week until he shall have been completely reimbursed for such payments.

Anything to the contrary notwithstanding, the husband agrees that said life interest of the wife shall survive any order, judgment or decree which may be made in any action which may hereafter be instituted between the parties for separation or divorce, except that the said life interest of the wife shall not survive the granting of a decree of divorce in favor of the husband against the wife by a court of competent jurisdiction in the State of New York provided the granting of such decree is based on the ground that the wife is living in open and notorious adulterous relations.

Twelfth

This agreement shall enure to the benefit of, and shall be binding upon, the parties hereto, their heirs, executors, administrators, and assigns; and the obligations of the husband hereunder incurred prior to his death shall survive his death, and shall be binding on his estate.

In Witness Whereof, the parties hereto have

hereunto set their respective hands and seals this
22d day of September, 1942.

ALEXANDRIA WOYNICZ
SIANOZECKI,

Wife. (L. S.)

LEONARD WOYNICZ
SIANOZECKI,

Husband. (L. S.)

State of New York,
City of New York,
County of New York—ss.

On this 23rd day of September, 1942, before me
personally came and appeared Alexandra Woynicz
Sianozecki, to me known and known to me to be
the individual described in, and who executed the
foregoing agreement, and duly acknowledged to me
that she executed the same.

/s/ JACK KLAU,

Notary Public, Bronx County.

Term Expires March 30, 1944.

State of New York,
City of New York,
County of New York—ss.

On this 22nd day of September, 1942, before me
personally came and appeared Leonard Woynicz
Sianozecki, to me known and known to me to be

the individual described in, and who executed the foregoing agreement, and duly acknowledged to me that he executed the same.

/s/ JOSEPH L. SIMON,
Notary.

Commission Expires March 30, 1943.

[Endorsed]: Filed March 4, 1949.

[Title of District Court and Cause.]

ANSWER

Comes now the defendant and for answer to the complaint of the plaintiff on file herein avers:

First Defense

I.

The complaint fails to state a claim against defendant upon which relief can be granted.

Second Defense

I.

Defendant alleges that he is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph I of the complaint.

II.

Defendant denies the allegations of paragraph II of the complaint.

III.

Defendant denies the allegations of paragraphs III, IV, V, VI, VII, VIII and IX of the complaint.

Third Defense

I.

If defendant did enter into an agreement with the plaintiff as mentioned in the complaint defendant avers that such agreement was procured by duress; that the facts constituting such duress are as follows: That in July, 1942, the plaintiff, without warning, filed and instituted a certain action for separate maintenance in the Court of New York State and therein alleged and made accusations against the defendant, which were fabrications out of the whole cloth, including accusations of infidelity on the part of the defendant, which plaintiff well knew to be untrue and without foundation in fact. That this action was brought and prosecuted while defendant was working from twelve to eighteen hours per day on war work and caused the defendant the greatest anguish and worry. That the defendant in an effort to dispose of said action in order that he could devote his time and attention to his war work, as aforesaid, was forced to sign papers by the plaintiff, the terms and conditions of which defendant would never have consented to had he been aware thereof and properly advised by counsel and had he not been completely distracted by the false accusations made

against him and the embarrassment and anguish caused by them; that the papers signed by defendant were dated September 22, 1942, and defendant avers on information and belief that the agreement styled Exhibit "A" of the complaint are those papers.

Fourth Defense

I.

Defendant avers that if he signed such an agreement as Exhibit "A" of the complaint, that it was at a time when the mental stress, worry, anguish and concern over his war work and the whereabouts and welfare of his son in the service had rendered the defendant temporarily incompetent and mentally unfit to contract; that from about May, 1942, to September 22, 1942, the date of the alleged execution of the purported agreement, the defendant had been and was under doctor's care; that the defendant was at that time fifty-eight (58) years of age, not completely recovered from an appendectomy complicated by peritonitis, and under severe mental stress, worry and anguish brought on by the following circumstances: Plaintiff had instituted a certain legal action in the State of New York and therein made accusations of infidelity on the part of the defendant which were untrue and without foundation in fact, and which the plaintiff well knew to be untrue and without foundation in fact; for several months just preceding September 22, 1942, the defendant had been engaged in war

work for from twelve (12) to eighteen (18) hours a day; that defendant was in ill health and greatly worried over the welfare and whereabouts of his son who was in the military service; that as a cause of all the above, combined with the advanced age of the defendant, defendant suffered from such nervous and mental tremulations, disease and disorders that if defendant signed the purported agreement styled Exhibit "A" of the complaint that he was unable to comprehend the consequences of his act, or to understand what he was doing.

Fifth Defense

I.

If the defendant did sign the agreement styled Exhibit "A" of the complaint, the defendant is not in default of said agreement because it is specifically provided in paragraph Tenth of said Exhibit "A" of the complaint that * * * "But no default shall be deemed to have occurred unless the husband shall have failed to cure any such default within five (5) days after mailing of notice of such default to him by registered mail"; defendant alleges that no such notices of default as to any payments have ever at any time been mailed to defendant by registered mail, and that no such notices of default have been mailed at any time or at all to the defendant or otherwise communicated to him in any way whatever prior to the bringing of this action.

Sixth Defense

I.

If the defendant did execute the agreement styled Exhibit "A," of the complaint, defendant avers that the said agreement was without any consideration whatever and merely an illusory agreement under which all the benefits moved to the wife, and none whatever to the husband.

Seventh Defense

I.

If the defendant did execute the agreement styled Exhibit "A," of the complaint, defendant avers that said agreement is void under the laws and public policy of the State of New York, in that paragraph Eighth of said agreement in effect provides that unless the husband defaults in some part of the agreement the wife is not to have the right to bring an action for legal separation or for support or maintenance or for both, nor to have the right to ask for alimony and counsel fees and under the laws of the State of New York an agreement under which one party to a marriage purports to contract away all the rights and incidents of the marital status is void as against public policy and will not be enforced at the suit of either party thereto.

Eighth Defense

I.

That if the defendant did execute the agreement styled Exhibit "A" of the complaint, the defendant avers that said agreement was thrust upon him by counsel and that he did not read the document before signing it, nor was it read to him, that the plaintiff was informed by counsel that the document he was signing was merely some papers to obtain the dismissal of a legal action which had been brought against him by his wife; that the defendant did not understand the nature of the document; that defendant did not read the papers, nor were they read to him; that the defendant is a native of Ukrania, whence he came to this country in 1912; that in his native land the defendant had only five (5) years of education, and that the five (5) years were devoted mostly to learning to read and write the language of his native land; that after the defendant came to this country he went to night school only periodically for three (3) years; that the above education is all that the defendant ever had; that the defendant had not in 1942 mastered the English language, and a great deal of the things that were said to him he did not understand; that so far as ability to read and write the English language is concerned, the defendant was illiterate in 1942; that had the defendant understood the meaning of the agreement styled Exhibit "A" of the complaint, he would never

have executed the same, and that the execution by him of said agreement was the result of a gross mistake for which he was no way at fault.

Ninth Defense

I.

Defendant avers that he is not a resident of the State of California but is and has been continuously since March, 1947, a resident of the State of Florida and that the action has been brought in the wrong district and should be dismissed.

Wherefore, defendant prays that plaintiff take nothing by her complaint and that judgment be rendered for the defendant and for costs of suit and such other relief as to the court may seem just.

/s/ JERRY B. RISELEY,
Attorney for Defendant.

Duly verified.

Affidavit of Service by Mail attached.

[Endorsed]: Filed March 25, 1949.

[Title of District Court and Cause.]

STIPULATION AMENDING COMPLAINT

It Is Hereby Stipulated and Agreed by and between the plaintiff and defendant, by their respective attorneys, that paragraph IX of the complaint heretofore filed in the above-entitled action be, and the same is hereby amended to read as follows:

“That plaintiff has duly performed all the terms and conditions of said agreement on her part, except as follows: Prior to April 1, 1947, defendant notified plaintiff in writing that on and after said date defendant would refuse to make any further payments to plaintiff (including those hereinbefore mentioned) pursuant to the terms of said agreement; that said agreement was unconscionable and invalid; that defendant would no longer abide by or perform the terms of said agreement on his part; and he thereupon completely repudiated said agreement. That by reason of the matters hereinbefore alleged, and by reason of the complete repudiation of said agreement by defendant as aforesaid, and his avowed and announced refusal further to perform the same, no notice or notices of default or demand for performance have been sent by plaintiff to defendant by registered mail, as provided in paragraph ‘Tenth’ of said agreement. By reason of defendant’s conduct aforesaid, the sending of such notice or notices was rendered unnecessary, useless and futile and was waived by the defendant.”

It Is Further Stipulated and Agreed that any other or further service or notice of such amendment or amended pleading be dispensed with.

It Is Further Stipulated and Agreed that the allegations contained in paragraph IX as herein amended be deemed denied by the defendant for all purposes of pleading; and that filing of any other or further answer or pleading by the defendant shall be dispensed with.

Dated: April 1, 1949.

/s/ DANIEL A. WEBER,
Attorney for Plaintiff.

L. J. STYSKAL and
JERRY B. RISELEY,

By /s/ L. J. STYSKAL.
Attorneys for Defendant.

It is so ordered: Dated this 11th day of April, 1949.

/s/ PEIRSON M. HALL,
Judge.

[Endorsed]: Filed April 11, 1949.

[Title of District Court and Cause.]

AMENDED AND SUPPLEMENTAL
COMPLAINT

(Action for Money Upon
Written Contract)

Plaintiff, as and for her amended and supplemental complaint, complains and alleges:

I.

That plaintiff is and at all times herein mentioned was a citizen and resident of the State of New York.

II.

That defendant is a citizen of the State of California, and resides in the County of Los Angeles, California.

III.

That the amount in controversy exceeds the sum of \$3,000.00, exclusive of interest and costs; and that by reason of the foregoing, this Court has jurisdiction of this cause.

IV.

That on or about September 22, 1942, defendant and plaintiff, as husband and wife, respectively, entered into a written agreement of support and maintenance, a copy of which is annexed to the original complaint, marked "Exhibit A," and which is incorporated herein by reference.

V.

That said agreement provided, among other things, that defendant shall pay to plaintiff, during her lifetime (unless sooner terminated as provided in said agreement), the sum of Fifty Dollars (\$50.00) per week, as and for her sole support and maintenance.

VI.

That there became due and payable to plaintiff, under the terms of said agreement, the sum of \$50.00 per week for each and every week during the period of one hundred and forty-three weeks from April 9, 1947, to the date of the filing of this amended and supplemental complaint, making an aggregate sum of \$7,150.00.

VII.

That defendant has failed to make payment to plaintiff of the installments described in the preceding paragraph hereof, except that defendant has paid to plaintiff, on account thereof, the aggregate sum of \$970.00 in the amounts and upon the dates set forth in Exhibit B, which is hereto annexed and made a part hereof.

VIII.

That there is justly due and owing from defendant to plaintiff a balance in the sum of \$6,180.00, no part of which has been paid although duly demanded.

IX.

That plaintiff has duly performed all the terms and conditions of said agreement on her part, except as follows: Prior to April 1, 1947, defendant notified plaintiff in writing that on and after said date defendant would refuse to make any further payments to plaintiff (including those hereinbefore mentioned) pursuant to the terms of said agreement; that said agreement was unconscionable and invalid; that defendant would no longer abide by or perform the terms of said agreement on his part; and he thereupon completely repudiated said agreement. That by reason of the matters hereinbefore alleged, and by reason of the complete repudiation of said agreement by defendant as aforesaid, and his avowed and announced refusal further to perform the same, no notice or notices of default or demand for performance have been sent by plaintiff to defendant by registered mail, as provided in paragraph "Tenth" of said agreement. By reason of defendant's conduct aforesaid, the sending of such notice or notices was rendered unnecessary, useless and futile and was waived by the defendant.

Wherefore plaintiff prays judgment against defendant for the aggregate sum of \$6,180.00, with interest upon each of the said installments of \$50.00 from the respective due dates thereof; for her costs of suit; and for such other and further relief as may be proper.

/s/ DANIEL A. WEBER,
Attorney for Plaintiff.

EXHIBIT B

Schedule of Payments Made by Defendant

Date	Amount
April 9, 1947.....	\$ 20.00
April 14, 1947.....	20.00
April 18, 1947.....	20.00
April 29, 1947.....	20.00
May 15, 1947.....	20.00
May 26, 1947.....	20.00
June 12, 1947.....	20.00
June 24, 1947.....	30.00
July 14, 1947.....	50.00
August 23, 1947.....	50.00
September 4, 1947.....	50.00
October 8, 1947.....	50.00
November 24, 1947.....	50.00
December 23, 1947.....	50.00
January, 1948.....	50.00
February, 1948.....	50.00
March, 1948.....	50.00
April, 1948.....	50.00
May, 1948.....	50.00
June, 1948.....	50.00

July, 1948.....	50.00
August, 1948.....	50.00
September, 1948.....	50.00
October, 1948.....	50.00

Total\$970.00

Affidavit of Service by Mail attached.

Lodged January 16, 1950.

[Endorsed]: Filed January, 23, 1950.

[Title of District Court and Cause.]

STIPULATION—ANSWER TO COMPLAINT
TO BE DEEMED ANSWER TO AMENDED
AND SUPPLEMENTAL COMPLAINT

It Is Hereby Stipulated and Agreed by and between the plaintiff and defendant by their respective attorneys that the answer heretofore filed by the defendant to the complaint shall be deemed for all purposes in this action to be the answer to the amended and supplemental complaint of the plaintiff heretofore filed in this action;

It Is Further Stipulated and Agreed that an order

to the foregoing effect may be entered without further notice.

Dated January 27, 1950.

/s/ DANIEL A. WEBER,
Attorney for Plaintiff.

/s/ JERRY B. RISELEY,
Attorney for Defendant.

It Is So Ordered: Dated this 30 day of January, 1950.

/s/ PEIRSON M. HALL,
Judge.

[Endorsed]: Filed January 31, 1950.

[Title of District Court and Cause.]

MOTION FOR NEW TRIAL & NOTICE OF
MOTION FOR NEW TRIAL

To Alexandra Woynicz, also known as Alexandra Woynicz Sianozecki, Plaintiff, and to Daniel A. Weber, Esq., her attorney:

You Will Please Take Notice that defendant in the above matter hereby moves for a new trial. The hearing on this motion will be held at 10:00, Monday, April 3, 1950, in Court Room No. 4 of the above court, before Judge Charles C. Cavanah, or at such

other time and place as may be designated by the Court.

The grounds upon which a new trial is sought are as follows:

(1) Irregularity in the proceedings of the court and by adverse party by which defendant was prevented from having a fair trial.

(2) Accident and Surprise which ordinary prudence could not have guarded against.

(3) Insufficiency of the evidence to justify the decision.

(4) Error in law occurring at the trial.

The insufficiency of evidence complained of is as follows:

(a) That insufficient evidence was introduced to establish that the separation agreement sued upon was fair and reasonable at the time of its execution and obtained without fraud, duress, and overreaching on part of plaintiff.

(b) That evidence introduced by plaintiff was not sufficient to overcome evidence offered by defendant that defendant was mentally incompetent to execute the instrument at the time of execution.

(c) That the evidence introduced by plaintiff was not sufficient to overcome the evidence offered by defendant that defendant was of unsound mind at the time of execution of the agreement and remained of unsound mind until late in 1947.

(d) That the evidence introduced by plaintiff

was not sufficient to overcome the evidence offered by defendant that defendant did not understand the agreement at the time of its execution.

(e) That the evidence introduced by plaintiff was not sufficient to establish that this court had jurisdiction over the subject matter of the action.

(f) That the evidence introduced by plaintiff was not sufficient to overcome the statutory presumption of undue influence in transactions between husband and wife.

(g) That the evidence introduced by the plaintiff establishes that the agreement was void as contrary to good morals and public policy.

That the considering of evidence offered by plaintiff and the failure to consider and give any weight whatever to the evidence offered by defendant was an abuse of judicial discretion.

The motion shall be heard upon the pleadings and papers on file and upon the minutes of the court including the clerk's minutes and any notes and memoranda which may have been kept by the judge and also the reporter's transcript of his shorthand notes and upon the exhibits introduced into evidence including all depositions.

Dated March 15, 1950.

/s/ JERRY B. RISELEY,
Attorney for Defendant.

Affidavit of Service by Mail attached.

[Endorsed]: Filed March 16, 1950.

[Title of District Court and Cause.]

MOTION BY DEFENDANT TO AMEND FINDINGS AND TO MAKE FINDINGS MORE CERTAIN AND OBJECTIONS TO FINDINGS & NOTICE OF MOTION

To Alexandra Woynicz, also known as Alexandra Woynicz Sianozecki, Plaintiff, and to Daniel A. Weber, Esq., her attorney:

You Will Please Take Notice that defendant in the above matter hereby moves that plaintiff be required to amend the proposed findings heretofore submitted to the court, and to make the findings more certain. The hearing on this motion will be held at 10:00 A.M., Monday, April 3, 1950, in Court Room No. 4 of the above court, before Judge Charles C. Cavanah, or at such other time and place as may be designated by the Court.

Defendant's objections to the findings are as follows:

(a) The findings submitted by plaintiff do not comply with the letter or intent of Rule 52, Federal Rules of Civil Procedure ". . . the Court shall find the facts specially and state separately its conclusions of law thereon . . ."

(b) The findings and conclusions submitted by plaintiff merely specify that each allegation of the plaintiff's complaint is true and that the defenses set up by defendant are without merit, making the find-

ings uncertain and unintelligible when viewed by themselves without reference to at least three other pleadings i.e. the amended and supplemental complaint, the complaint and the answer.

(c) As submitted the findings ignore and evade the most important contention of law made by the defendant i.e. that the agreement is void as contrary to public policy because paragraph VIII, thereof, viewed with the remainder of the agreement, and particularly paragraph IX, purports to mortgage away the jurisdiction of the courts and to hinder the right of the parties to judicial redress.

(d) The proposed findings make no finding upon the specific mental condition of the defendant, and avoid the question necessarily included in the defence offered by the defendant as to whether the defendant—said in the proposed findings to have been mentally competent—was, although perhaps not so insane as to have been totally without understanding, of an unsound mind at the time of the execution of the contract and at the times of all the weekly payments mentioned in paragraph IV of the findings, or as to whether defendant was, or was not, acting under any dillusions which under the circumstances might have tainted the agreement.

(e) It is not clear from the findings just what the import of paragraph IV of the findings—that the weekly payments were made during the four year & some months period “with knowledge of the agreement”—is, i.e. wether the court held that as

a matter of law the defendant, although he might have been of unsound mind at the time of execution of the instrument, did, by his subsequent conduct in making the payments, perhaps while in the same state of mind he was in when he signed the agreement, become estopped to deny the validity of the agreement, or whether he later recovered his capacity and ratified the agreement by making the payments.

(f) No findings is made, except by reference to the amended complaint, as to the effect, if any, of defendant's letter of rescission sent to plaintiff in 1947, although this letter is relied upon to excuse the plaintiff from serving notice of default—a condition precedent to suit according to the terms of the contract.

(g) No finding is made on the essential point to plaintiff's recovery in this case, i.e. was the agreement in all respects fair, reasonable, and just in view of all the circumstances of the parties at the time and entered into without coercion or exercise of undue influence and with full knowledge of all the circumstances, conditions and rights of the contracting parties.

This motion is intended to be a motion under Rule 52 (b) FRCP and will be made and heard upon the pleadings, papers, and briefs on file, and upon the minutes of the court including the clerk's minutes and any notes and memoranda which may have been kept by the judge and also the reporter's transcript

of his shorthand notes and upon the exhibits introduced into evidence including all depositions.

Dated March 16, 1950.

/s/ JERRY C. RISELEY,
Attorney for Defendant.

Affidavit of Service by Mail attached.

[Endorsed]: Filed March 17, 1950.

At a stated term, to wit: The February Term, A. D. 1950, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Friday the 24th day of March in the year of our Lord one thousand nine hundred and fifty.

Present: The Honorable Charles C. Cavanah,
District Judge.

[Title of Cause.]

MINUTE ORDER

(Motion for New Trial Denied)

For hearing (1) motion by defendant to amend findings and to make findings more certain and for hearing objections to findings and notice motion; (2) motion of defendant for new trial, pursuant to

notice filed March 16, 1950; Daniel A. Weber, Esq., appearing as counsel for plaintiff; Jerry B. Riseley, Esq., appearing as counsel for defendant.

On statement of Attorney Riseley, it is ordered that the findings of fact and conclusions of law, filed on March 20, 1950, are vacated in order that Attorney Riseley may object thereto.

Attorney Riseley argues objections to findings. Attorney Weber argues in support of findings. Court makes a statement and orders that objections to findings are overruled and findings settled as of this date and re-filed, and that judgment, heretofore filed, be re-filed as of this date.

At 10:57 A.M. Attorney Riseley argues motion for a new trial. Court makes a statement. Attorney Riseley reads deposition of J. Charles Zimmerman.

At 11:54 A.M. Court declares a recess to 2 P.M. At 2 P.M. court re-convenes herein and all being present as before, including counsel for both sides.

Attorney Riseley resumes reading from deposition of J. Chas. Zimmerman and reads from deposition of Jos. L. Simon. At 2:49 P.M. Attorney Riseley reads from deposition of Leonard Woynicz.

At 3:44 P.M. Attorney Weber argues to the Court. Attorney Riseley argues.

The Court makes a statement and orders motion for new trial denied.

At 3:54 P.M. Court declares a recess in this cause to March 27, 1950, 10 A.M., for further proceedings.

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above-entitled action having duly come on for trial on the 7th day of March, 1950, before Honorable Charles C. Cavanah, in courtroom No. 4 of this Court; and Daniel A. Weber, Esq., appearing as attorney for the plaintiff and Jerry B. Riseley, Esq., appearing as attorney for the defendant; and the parties having offered oral and documentary evidence with respect to the issues herein; the court does hereby make the following findings of fact and conclusions of law, constituting the decision of the court:

Findings of Fact

I.

That each and every allegation contained in paragraphs I, II, III, IV, V, VI, VII, VIII and IX of plaintiff's amended and supplemental complaint herein, is true.

II.

That at the time of the execution of the agreement dated September 22, 1942, which agreement is specified in the amended and supplemental complaint, the defendant was mentally competent to enter into said agreement and fully understood and comprehended the nature and purpose of said transaction; that the same was entered into by the defendant

freely and voluntarily and that at the time of the execution thereof the defendant was not acting under any duress or other disability.

III.

That no fraud was practiced upon the defendant in respect to the execution of said agreement.

IV.

That between September 22, 1942, and March 7, 1947, the defendant made or caused to be made, weekly payments in the sum of \$50.00 pursuant to the provisions of said agreement, which payments were made by the defendant with knowledge of said agreement and its provisions and of the nature of said payments.

Conclusions of Law

I.

That the plaintiff is entitled to a judgment against the defendant in the sum of \$6,180.00 with appropriate interest.

II.

That the first, second, third, fourth, fifth, sixth, seventh, eighth and ninth defenses set forth in the answer of the defendant are, and each of them is, without merit.

III.

That the plaintiff is entitled to her costs of suit herein.

Allowed: Dated, March 24th, 1950.

/s/ CHARLES C. CAVANAH,
United States District Judge.

3/24/50

Objections made to proposed Findings are hereby denied.

/s/ CHARLES C. CAVANAH,
Judge.

Affidavit of Service by Mail attached.

[Endorsed]: Filed March 24th, 1950.

[Endorsed]: Filed March 20, 1950.

In the District Court of the United States, Southern District of California, Central Division

No. 9324 PH

ALEXANDRA WOYNICZ, Also Known as
ALEXANDRA WOYNICZ SIANOZECKI,
Plaintiff,

vs.

LEONARD WOYNICZ, Also Known as LEONARD WOYNICZ SIANOZECKI,
Defendant.

JUDGMENT FOR PLAINTIFF AFTER TRIAL

The above-entitled action having duly come on for trial on the 7th day of March, 1950, before Honorable Charles C. Cavanah, in courtroom No. 4 of this court; and Daniel A. Weber appearing as attorney for the plaintiff and Jerry B. Riseley appearing as attorney for the defendant; and the parties having offered oral and documentary evidence with respect to the issues herein, and the court having duly made its findings of fact and conclusions of law;

Now, on motion of Daniel A. Weber, attorney for plaintiff;

It Is Hereby Adjudged and Decreed that plaintiff, Alexandra Woynicz, also known as Alexandra Woynicz Sianozecki, recover of the defendant Leonard Woynicz, also known as Leonard Woynicz Sianozecki, the sum of \$6,180.00, with interest in the sum of \$600.83; and that the plaintiff also re-

cover of the defendant her costs of suit herein which are taxed in the sum of \$86.41.

Dated, March 20th, 1950.

/s/ CHARLES C. CAVANAH,
United States District Judge.

Filed Mar. 20, 1950.

EDMUND L. SMITH,
Clerk.

By /s/ C. A. SIMMONS,
Deputy Clerk.

Filed Mar. 24, 1950.

EDMUND L. SMITH,
Clerk.

By /s/ C. A. SIMMONS,
Deputy Clerk.

Judgment entered Mar. 20, 1950.

Docketed Mar. 20, 1950.

Book 64, page 515.

EDMUND L. SMITH,
Clerk.

By /s/ C. A. SIMMONS,
Deputy Clerk.

Judgment entered Mar. 28, 1950.

Docketed Mar. 28, 1950.

Book 64, page 726.

EDMUND L. SMITH,
Clerk.

By /s/ C. A. SIMMONS,
Deputy Clerk.

Affidavit of Service by Mail attached.

[Title of District Court and Cause.]

NOTICE OF APPEAL

To the Clerk of the above-entitled Court:

The defendant, Leonard Woynicz, also known as Leonard Woynicz Sianozecki, hereby appeals from the judgment and orders of the above Court, set forth below, to the United States Circuit Court of Appeals for the Ninth Circuit.

The judgment and orders appealed from are as follows:

1. Judgment for the plaintiff and against defendant entered in the above-entitled action on March 28, 1950, Judgment Book No. 64, Page 726.

2. Order denying Motion of Defendant to Amend Findings and to Make Findings More Certain made March 24, 1950.

3. Order denying Motion of Defendant for a New Trial, made March 24, 1950.

Dated April 17, 1950.

/s/ JERRY B. RISELEY,
Attorney for Defendant.

Affidavit of Service by Mail attached.

[Endorsed]: Filed April 17, 1950.

In the United States District Court, Southern District of California, Central Division

No. 9324-PH-Civil

ALEXANDRA WOYNICZ, Also Known as
ALEXANDRA WOYNICZ SIANOZECKI,
Plaintiff,

vs.

LEONARD WOYNICZ, Also Known as LEONARD WOYNICZ SIANOZECKI,
Defendant.

Honorable Charles C. Cavanah, Judge Presiding.

REPORTER'S TRANSCRIPT OF
PROCEEDINGS

Appearances:

For the Plaintiff

DANIEL A. WEBER, ESQ.

For the Defendant:

JERRY B. RISELEY, ESQ.

Tuesday, March 7, 1950

The Clerk: The next case is No. 9324-PH, Civil, Alexandra Woynicz v. Leonard Woynicz. Our record shows that Daniel A. Weber is present and counsel for the plaintiff, and Jerry B. Riseley is present for the defendant.

Is Alexandra Woynicz in court?

Mr. Weber: No.

The Clerk: Is Leonard Woynicz in court?

Mr. Riseley: Yes.

Mr. Weber: She is a non-resident.

Does the court feel that a brief opening statement would be of service to the court?

The Court: Yes.

Mr. Weber: This is an action to recover installments under a separation agreement entered into between the plaintiff and the defendant. These parties were married upwards of 26 years, and in about the month of July or August, 1942, your Honor, the defendant's wife filed an action in the Supreme Court in New York for separation, and incident to that action she asked for temporary alimony and counsel fees as an incident to the separation.

During the pendency of that action protracted negotiations were entered into between the lawyers for the plaintiff in New York and the lawyer for the defendant in New York, [3*] culminating in the entry of a written separation agreement which is the basis of this action, and under that separation agreement the defendant agreed to pay the plaintiff the sum of \$50.00 a week for her support and maintenance. The written agreement also covers a number of other subjects, including a life interest to plaintiff's wife in the residence of the parties in the Borough of the Bronx, City of New York, and provides for certain other incidents of the marriage relation.

* Page numbering appearing at top of page of original Reporter's Transcript.

Thereafter, these \$50.00 a week installments were paid, without incident, for upwards of four years. He paid \$50.00 a week by check for approximately four years, without incident, and in the early part of 1947—I think it was in the month of January, 1947—the defendant went to Florida. After establishing a 90-day residence period in Florida he procured a divorce, served by publication. The plaintiff's wife did not appear in that action, nor was she personally served. Thereafter and in the month of March, 1947—this is approximately almost five years—four and one-half years after the separation agreement was signed, a letter of repudiation was sent by the Florida attorneys for the defendant, advising the plaintiff that thenceforth they were not going to adhere to the separation agreement; that it was inequitable in that it made no provision for changed circumstances of the parties, and so on.

This action is brought to recover \$6,180, representing the accrued installments of \$50.00 a week which the defendant [4] has failed to pay, \$6,180.

The big issue here is whether or not the defendant, at the time he executed the agreement, had the mental competence to understand what he was signing, and whether or not duress was practiced upon him chargeable to the plaintiff.

We submit that, as a matter of law, having made payments under this separation agreement for upwards of four years, the defendant has waived, as a matter of law, any right to attack the agreement by reason of any alleged disability inherent

in its inception, assuming such to be the fact.

We have the authorities to the effect that where one acts under an agreement and evinces his awareness of its validity, or acts upon it as though it were a valid and subsisting contract, as a matter of law he cannot sit by in silence and, at some future or later date, come in and claim that the agreement was procured originally by duress or mental incompetence.

The Court: Does the defendant wish to make any opening statement at this time? You do not have to unless you want to.

Mr. Riseley: If it please the court, I will defer my opening statement until the plaintiff closes.

The Court: You may proceed. [5]

LEONARD WOYNICZ

(Also known as Leonard Woynicz Sianozecki.)

the defendant herein, called as a witness by the plaintiff, being first sworn, was examined and testified as follows:

The Clerk: Your full name?

The Witness: Leonard Woynicz Sianozecki.

The Clerk: Sianozecki, is that your last name?

The Witness: Yes, Sianozecki.

The Clerk: The last name of the defendant is Sianozecki.

The Court: You may proceed.

Mr. Weber: The prevailing pleading, your Honor, is the Amended and Supplemental Complaint. We brought the installments up to date in that amended pleading.

(Testimony of Leonard Woynicz.)

Direct Examination

By Mr. Weber:

Q. Where do you live, Mr. Woynicz?

A. At present, 232 West Imperial Highway.

Q. Were you married to the plaintiff in this action? A. Yes.

Q. When did you marry the plaintiff?

A. In December, 1916.

Q. She resides at 2929 Wellman Avenue, Bronx?

A. Yes, sir.

Q. That is in the City of New York?

A. Bronx. [6]

Q. Mr. Woynicz, in July or August of 1942 did the plaintiff file an action against you in the Supreme Court of the State of New York, Bronx County, for a separation? A. Yes.

Q. And after the filing of that action were there negotiations involving a settlement agreement entered into? A. Yes.

Q. I show you a document, Mr. Woynicz, and ask you whether or not this bears your signature?

A. Yes, sir.

Q. And that is the separation agreement that was signed at that time? A. Yes.

Mr. Weber: I offer that in evidence.

The Court: Admitted.

The Clerk: That will be Plaintiff's Exhibit No. 1 into evidence.

(Testimony of Leonard Woynicz.)

PLAINTIFF'S EXHIBIT No. 1

This Agreement made this 22nd day of September, 1942, between Alexandra Woynicz Sianozecki, residing at 2929 Wellman Avenue, Borough of Bronx, City and State of New York, hereinafter referred to as the "Wife," and Leonard Woynicz Sianozecki, residing at 2929 Wellman Ave. in the Borough of Bronx, City and State of New York, hereinafter referred to as the "Husband."

Witnesseth:

Whereas, the parties married on or about the 26th day of December, 1916, in the City of New York, State of New York; and

Whereas, there is one minor child born of said marriage, namely: Robert, who is now about seventeen (17) years of age, hereinafter referred to as "Robert"; and

Whereas, unhappy differences have arisen between the Husband and Wife, as a result of which they now are living separate and apart from each other; and

Whereas, an action is now pending in the Supreme Court of the State of New York in and for the County of Bronx wherein the Wife is plaintiff and the Husband is defendant, and wherein the Wife prays for a judgment and decree of separa-

(Testimony of Leonard Woynicz.)

Plaintiff's Exhibit No. 1—(Continued)

tion, such action having been commenced on or about the 4th day of August, 1942; and

Whereas, both the Husband and Wife have been fully, separately and independently advised of their legal rights and obligations by counsel of their own selection; and

Whereas, the Wife wishes to discontinue and terminate the aforementioned action; and

Whereas, it is the intention of the parties to continue to live separate and apart forever, and in view of their irreconcilable estrangement the Husband desires to make provisions for the support and maintenance of the Wife, and for the custody, support and maintenance and education of Robert;

Now, Therefore, in consideration of the premises and the mutual promises and undertakings herein contained, the parties agree:

First

This agreement shall take effect as of August 23rd, 1942, and continue for the natural lives of both parties, unless previously terminated by the occurrence of any one or more of the following:

- a. The death of the Wife.
- b. The remarriage of the Wife.
- c. The granting of a decree of divorce in favor of the Husband against the Wife by a

(Testimony of Leonard Woynicz.)

Plaintiff's Exhibit No. 1—(Continued)

Court of competent jurisdiction in the State of New York provided the granting of such decree is based on the ground that the Wife is living in open and notorious adulterous relations.

d. The repudiation of this agreement by consent of the parties provided said repudiation is in writing and duly signed and acknowledged by each of the parties hereto.

e. The death of the Husband, but nothing herein contained shall be deemed to relieve the estate of the Husband from any obligation incurred hereunder by the Husband prior to his death.

Second

From the date hereof the parties may and shall continue to live separate and apart for the rest of their natural lives and each shall be free from interference, authority and control, direct or indirect, by the other as fully as if sole and unmarried. Each may, for his or her separate use and benefit, engage in any employment, business or profession which he or she may deem advisable. Each may reside at such place or places as he or she may select.

Third

The wife shall own, have and enjoy independently of any claim or right of the Husband, all

(Testimony of Leonard Woynicz.)

Plaintiff's Exhibit No. 1—(Continued)

silverware, pictures, portraits, books, household furniture, china, glassware, rugs, and other household effects of every kind and description now located in the top floor apartment at 2929 Wellman Avenue, Borough of Bronx, City and State of New York, and the garden tools and equipment now located at the aforesaid premises, and also all wearing apparel, personal ornaments, and other personal property belonging to the Wife and now in her possession, or held by her, or which shall hereafter belong or come to her.

Fourth

The Husband shall, within six (6) weeks from date hereof, remove from the premises mentioned in the preceding paragraph, all of his personal tools, books and wearing apparel wherever the same may be located.

Fifth

The parties have carefully weighed the question of the custody of Robert. In doing so they have been guided solely by considerations touching upon Robert's welfare. They are convinced that the following disposition will be for the best interests of Robert:

- a. The Husband shall have sole custody, control and education of Robert. He shall be responsible and liable for his adequate sup-

(Testimony of Leonard Woynicz.)

Plaintiff's Exhibit No. 1—(Continued)

port, maintenance and education consistent with his financial means, environment, and mode of living.

b. Should Robert desire to live or visit with the Wife, at any time or times hereafter, the Husband shall not prevent the fulfillment of said desire or desires, and during Robert's said visits or living with the Wife, the Husband shall remain responsible and liable for his adequate support, maintenance and education consistent with his financial condition, environment and mode of living.

Sixth

So long as the Wife shall fully keep, observe and perform the covenants and conditions to be kept, observed and performed by her under this agreement the husband shall pay to the Wife, for her sole support and maintenance, the sum of Fifty (\$50.00) Dollars a week, on the first day of each and every week commencing with August 23rd, 1942, during her natural life, unless this agreement is earlier terminated as herein provided.

Seventh

In consideration of the provisions herein made for her, the Wife has simultaneously herewith withdrawn the action for separation which she has

(Testimony of Leonard Woynicz.)

Plaintiff's Exhibit No. 1—(Continued)

heretofore commenced against the Husband in the Supreme Court of the State of New York, County of Bronx; and she has likewise withdrawn the motion made in such action for alimony and counsel fees. The counsel fees of the Wife, amounting to \$350.00 have been paid simultaneously herewith by the Husband to the Wife's attorney, Jack Klaw, Esq., of 521 Fifth Avenue, New York City, who has accepted the same in full satisfaction as to the Husband's liability for the services rendered by him in connection with the preparation of this agreement and also in connection with the Wife's aforesaid separation action.

Eighth

If the Husband defaults in the due performance of any of the terms, conditions, and covenants of this agreement on his part to be performed, the Wife shall have the right to bring an action either for a legal separation or for support and maintenance, or for both, and in any such action she shall have the right to ask for and obtain temporary and permanent alimony and counsel fees.

Ninth

Unless terminated as in paragraph "First" aforesaid, this agreement shall survive any order for payment of alimony, temporary or permanent, which may be made in any action which hereafter may be instituted between the parties for separation or divorce, and/or any interlocutory or final

(Testimony of Leonard Woynicz.)

Plaintiff's Exhibit No. 1—(Continued)

judgment or decree in such action granting or denying such alimony, and//or any order modifying such order, judgment or decree in such action, and this agreement shall not be merged in any of the aforementioned orders, judgments or decrees, but shall survive the same.

Tenth

The payments required to be made hereunder by the Husband to the Wife shall be made by money order or good check and shall be sent by mail to the Wife directed to her address above indicated. The Wife may from time to time specify other addresses to which said payments shall be mailed. The Husband shall not receive any credit for any payments hereunder unless said payments shall have been actually received by the Wife. But no default shall be deemed to have occurred unless the Husband shall have failed to cure any such default within five days after the mailing of notice of such default to him by registered mail.

Eleventh

The Husband simultaneously herewith, does execute and deliver to the Wife, a deed to premises 2929 Wellman Avenue, Bronx, and the lots adjacent thereto now owned by the Husband, free and clear of any liens or claims, conveying to the Wife a life interest therein with remainder to the chil-

(Testimony of Leonard Woynicz.)

Plaintiff's Exhibit No. 1—(Continued)

dren of their marriage, as joint tenants with the right of survivorship. In the event that the taxes, assessments, water rates, water charges and premium for adequate fire insurance affecting said property are not paid when payable and if the same remain unpaid for more than ten (10) days after notice from the Husband in writing requesting the Wife to pay the same, the Husband shall have the right to pay the same and deduct from the weekly payments provided for in paragraph "Sixth" hereof, the sum of Ten (\$10) per week until he shall have been completely reimbursed for the payment so made by him.

In the event of any notice of violation or order or demand from any municipal, state or federal department as may effect the aforesaid premises, then the Wife agrees to remove or comply with the same within the reasonable time and upon her failure so to do, the Husband shall have the right to remove or comply with the same and shall have the right to deduct from the weekly payments provided in paragraph "Sixth" hereof, the sum of Ten (\$10) Dollars per week until he shall have been completely reimbursed for such payments.

Anything to the contrary notwithstanding, the Husband agrees that said life interest of the Wife shall survive any order, judgment or decree which may be made in any action which may hereafter be instituted between the parties for separation or

(Testimony of Leonard Woynicz.)

Plaintiff's Exhibit No. 1—(Continued)

divorce, except that the said life interest of the wife shall not survive the granting of a decree of divorce in favor of the Husband against the Wife by a court of competent jurisdiction in the State of New York provided the granting of such decree is based on the ground that the Wife is living in open and notorious adulterous relations.

Twelfth

This agreement shall enure to the benefit of, and shall be binding upon, the parties hereto, their heirs, executors, administrators, and assigns, and the obligations of the Husband hereunder incurred prior to his death shall survive his death, and shall be binding on his estate.

In Witness Whereof, the parties hereto have hereunto set their respective hands and seals this 22nd day of September, 1942.

/s/ ALEXANDRIA WOYNICZ
SIANOZECKI,
Wife.

/s/ LEONARD WOYNICZ
SIANOZECKI,
Husband.

(Testimony of Leonard Woynicz.)

Plaintiff's Exhibit No. 1—(Continued)

State of New York,
City of New York,
County of New York—ss.

On this 23rd day of September, 1942, before me personally came and appeared Alexandra Woynicz Sianozecki, to me known and known to me to be the individual described in, and who executed the foregoing agreement, and duly acknowledged to me that she executed the same.

/s/ JACK KLAW,
Notary.

Term Expires March 30, 1944.

State of New York,
City of New York,
County of New York—ss.

On this 22nd day of September, 1942, before me personally came and appeared Leonard Woynicz Sianozecki, to me known and known to me to be the individual described in, and who executed the foregoing agreement, and duly acknowledged to me that he executed the same.

/s/ JOSEPH L. SIMON,
Notary.

Commission Expires March 30, 1943.

[Endorsed]: Filed May 26, 1950.

(Testimony of Leonard Woynicz.)

Q. (By Mr. Weber): The separation action was thereafter dropped by your wife?

A. I didn't hear you.

Q. That separation action which she brought was thereafter dropped by your wife? A. Yes.

Q. Did you go to Florida in the early part of 1947, Mr. Woynicz? [7]

A. In January, 1947.

The Court: Speak out loud so we can hear you.

The Witness: Yes; January, 1947.

Q. (By Mr. Weber): And you made these \$50.00 a week payments under the separation agreement until you went to Florida?

A. Until May.

Q. 1947?

A. May, 1947, then I continued to pay \$50.00 a month.

Q. I show you a document, a letter dated March 3, 1947, written by the law firm of Bouvier, Helliwell & McCaul of Miami, Florida, and ask you whether or not they represented you at that time?

A. Yes, sir.

Q. And this letter was sent by that firm to the plaintiff with your consent? A. Yes.

Mr. Weber: I offer that into evidence.

The Court: Admitted.

The Clerk: Plaintiff's Exhibit No. 2 into evidence.

(Testimony of Leonard Woynicz.)

PLAINTIFF'S EXHIBIT No. 2

Law Offices
Bouvier, Helliwell & McCaul
Langford Building
Miami, Florida

March 3, 1947

Registered
Return Receipt Requested

Mrs. Alexandra Woynicz
2929 Wellman Avenue
Bronx,
New York, N. Y.

Dear Mrs. Woynicz:

We have been retained by your husband, Mr. Leonard Woynicz, who is a permanent resident of the State of Florida, to represent him in a settlement of the problems presently existing between you.

Mr. Woynicz has informed us, and has given us satisfactory evidence, that he does not have the present or anticipated income or resources to continue payments to you at the rate stipulated under the alleged separation agreement between yourself and Mr. Woynicz dated September 22, 1942.

We have examined this agreement and it is our opinion that this agreement is unconscionable and inequitable in that it makes no provision for modi-

(Testimony of Leonard Woynicz.)

fication because of changed circumstances of the parties and attempts to preclude a court of competent jurisdiction in the place of residence of either party from making such modifications as right and justice might require.

Mr. Woynicz is, therefore, sending you payment due for the month of March 1947 and is thereafter discontinuing payments to you under said agreement on the grounds that said agreement is unconscionable and inequitable, was improperly procured and makes financial demands far beyond his present or anticipated means.

However, Mr. Woynicz is fully aware of his responsibility to you so long as you remain his wife and thereafter and has instructed us to advise you that he is willing to enter into negotiations for a new agreement providing for monthly payments to you or for other settlement, based upon his present and anticipated financial resources. If a lump sum settlement is effected, such settlement is, of course, to be in full settlement of all present, past and future claims which you may have against him. If the new agreement provides for regular payments for an indefinite period then and in that event the agreement must also provide that a court of competent jurisdiction will have power to modify these payments as the financial circumstances of the parties may change from time to time.

We again reiterate that Mr. Woynicz has every desire and willingness to meet any reasonable obligations he may have to you to contribute to your

(Testimony of Leonard Woynicz.)

support. However, he will not and cannot continue to perform under the alleged agreement in existence for the reasons above outlined. We, therefore, request that you at once advise us of your position in this matter so that we may commence negotiations with respect to working out an agreement which is fair and equitable to all parties concerned.

Very truly yours,

BOUVIER, HELLIWELL &
McCAUL,

/s/ PAUL L. E. HELLIWELL.

Received in Evidence March 7, 1950.

Mr. Weber: With the permission of the court, I would like to read into the record a question and answer contained in the deposition of this witness in respect to the payments made prior to the action.

The Court: Is the deposition identified at all?

Mr. Weber: Counsel and I are in accord that it may be read, that portion.

The Court: I did not hear you. You whisper across the table and I do not know what you are saying to each other.

Mr. Riseley: Show me that portion which you want to read, counsel.

Mr. Weber: Is it stipulated that Exhibit B attached to the complaint correctly sets forth all the

(Testimony of Leonard Woynicz.)

payments made by the defendant to the plaintiff from April 9, 1947, to the date of the filing of the Amended and Supplemental Complaint?

Mr. Riseley: Ask him.

Q. (By Mr. Weber): Mr. Woynicz, is this your signature (indicating)? A. Yes.

Q. I show you page 38 in that deposition, Mr. Woynicz, and ask you whether or not this refreshes your recollection that the installments listed upon Exhibit B of the Amended and Supplemental Complaint, or Exhibit B attached to the complaint, rather, correctly sets forth all of the payments which you made to the plaintiff under the agreement from April 9, 1947, to the date of the filing of the Amended and Supplemental Complaint?

A. This is not correct—oh, yes; you are right.

Q. Is that correct? A. Yes, sir. [9]

Mr. Weber: I offer in evidence by reference Exhibit B attached to the complaint in this action.

The Court: Any objection?

Mr. Riseley: No objection.

The Court: Admitted.

The Clerk: That will be Plaintiff's Exhibit No. 3 into evidence, which is Exhibit B attached to the complaint.

Mr. Weber: I offer into evidence at this time a stipulation entered into by counsel for both sides, authorizing the introduction of the deposition of

(Testimony of Leonard Woynicz.)

the plaintiff which I hold here, with the same force and effect as though it were taken on due notice.

The Court: Admitted.

The Clerk: Do you want that marked as an exhibit?

Mr. Weber: If I may.

The Clerk: The stipulation will be Plaintiff's Exhibit No. 4 into evidence.

PLAINTIFF'S EXHIBIT No. 4

In the District Court of the United States, Southern District of California, Central Division

No. 9324 PH

ALEXANDRA WOYNICZ, Also Known as
ALEXANDRA WOYNICZ SIANOZECKI,
Plaintiff,

vs.

LEONARD WOYNICZ, Also Known as LEONARD WOYNICZ SIANOZECKI,
Defendant.

STIPULATION RE DEPOSITION
OF PLAINTIFF

It Is Hereby Stipulated and Agreed by and between the plaintiff and defendant by their respec-

(Testimony of Leonard Woynicz.)

tive attorneys that the deposition of the plaintiff, sworn to September 9, 1949, before Jack Klaw, Notary Public in and for the County of New York, State of New York, may be received in evidence upon the trial of this action with the same force and effect as though the same were taken upon due notice to the defendant.

Dated: December 22, 1949.

/s/ DANIEL A. WEBER,
Attorney for Plaintiff.

/s/ JERRY B. RISELEY,
Attorney for Defendant.

Received in Evidence March 7, 1950.

Mr. Weber: I offer into evidence the deposition of the plaintiff dated September 9, 1949.

The Court: If there is no objection, it is admitted.

The Clerk: The document entitled "Deposition of Alexandra Woynicz" will be Plaintiff's Exhibit No. 5 into evidence.

(Testimony of Leonard Woynicz.)

PLAINTIFF'S EXHIBIT No. 5

In the District Court of the United States, Southern District of California, Central Division

No. 9324 PH

ALEXANDRA WOYNICZ, Also Known as
ALEXANDRA WOYNICZ SIANOZECKI,
Plaintiff,

vs.

LEONARD WOYNICZ, Also Known as LEONARD WOYNICZ SIANOZECKI,
Defendant.

DEPOSITION OF ALEXANDRA WOYNICZ,
ALSO KNOWN AS ALEXANDRA WOYNICZ SIANOZECKI

State of New York,

County of New York—ss.

Alexandra Woynicz, also known as Alexandra Woynicz Sianozecki, being first duly sworn, deposes and says:

1. I am the plaintiff in the above action.
2. I state and affirm that I have never remarried, or entered into any marriage or marriage ceremony with any person since the execution of

(Testimony of Leonard Woynicz.)

the separation agreement described in the complaint in this action

/s/ ALEXANDRA WOYNICZ,
Also Known as ALEXANDRA WOYNICZ
SIANOZECKI.

Subscribed and sworn to before me this 9th day of September, 1949.

/s/ JACK KLAU,

Notary Public in and for said County and State.

My Commission Expires March 30, 1950.

Received in Evidence March 7, 1950.

Mr. Weber: No further questions.

The Court: Any cross-examination?

Mr. Riseley: I will examine him when he comes on in his [10] own behalf, your Honor.

The Court: I can't hear you.

Mr. Riseley: I will examine him further when the defendant commences his case in court.

The Court: Any questions now?

Mr. Riseley: No, your Honor.

The Court: You are excused. Call your next witness.

Mr. Weber: Plaintiff rests.

The Court: You are excused, yes.

Mr. Riseley: At this time I would like to make an opening statement and open my case, your Honor.

The Court: All right; go ahead.

Mr. Riseley: Your Honor, in this case there is a separation agreement that was entered into and now it has been attacked. One of the basic elements——

The Court: I have a note here. Let me see it a moment. We will take a recess of about two minutes. Another Judge wants to speak to me about a matter.

(Short recess.)

Mr. Riseley: Your Honor, one of the basic elements of a separation agreement is that it must be entered into between competent parties and it must be fair.

The Court: At the time it was executed.

Mr. Riseley: At the time it was executed.

The Court: That is correct. [11]

Mr. Riseley: In the case of incompetent parties we have two views of the law; one, that their contracts are void; and the other, that they are voidable.

In this case, whichever view you take, it does not make much difference.

The Court: Of course, if he was incompetent to make the contract, it is void. That is elementary. It is a question of fact whether he was incompetent. You need not waste time citing decisions on that. You learn that before you are admitted to the Bar.

Mr. Riseley: Then in this case, the simple question is: Was this man competent at the time he executed this contract?

The Court: That is your question.

Mr. Riseley: That is our question.

The Court: Very well; go ahead.

Mr. Riseley: We will proceed to put on our case to show his condition. Mr. Woynicz, take the stand, please.

The Clerk: You were heretofore sworn. Will you take the stand, please?

LEONARD WOYNICZ

(Also known as Leonard Woynicz Sianozecki) the defendant herein, called as a witness in his own behalf, having been previously sworn, was examined and testified as follows: [12]

Direct Examination

By Mr. Riseley:

Q. Where were you born, Mr. Woynicz?

A. At that time it was Russia. It is in Russia right now, too, but that belonged to Poland.

Q. And when were you born?

A. April 10, 1885.

Q. And when did you come to this country?

A. September 12, 1911.

Q. Could you speak English at that time?

A. When I came to America?

Q. Yes.

(Testimony of Leonard Woynicz.)

A. No; only Polish and Russian.

Q. When did you bring your wife to this country?

A. In 1916. In December she arrived, in 1916, from Russia.

Q. How much older are you than your wife?

A. Nine years, nine years difference. She was nine years younger than I. She was 24 or 23 and I was 33 or 32.

Q. Do you still have relatives in Europe?

A. Yes; I have in Poland, my brother.

The Court: Speak out loud.

The Witness: I have a brother in Poland now. I had another brother in Siberia.

Q. (By Mr. Riseley): In 1941 did you have——

A. He died in Siberia.

Q. When did you learn about that, in 1940?

A. In 1941.

Q. Would you tell the Judge what you felt when you learned of your brother's death?

A. Your Honor, my brother brought me here——

(Intermission for other court proceedings.)

The Court: Go ahead.

Mr. Weber: Would you repeat the question, please?

(Question read by the reporter.)

A. In the horrible way he died. He died in such a horrible way. Then, you know, in America when that case come and my wife——

(Testimony of Leonard Woynicz.)

The Court: Speak up and talk loud so the reporter can hear you.

A. When the case came to court where my wife sue me for separation, it was such injustice. It was everything was false——

Mr. Weber: Just a minute, just a minute.

The Witness: All accusations was false.

Mr. Weber: Just a moment, Mr. Woynicz. I believe the question was something in connection with the news of his brother's death in 1941.

The Witness: That comes altogether. That is my wife——

Mr. Weber: Mr. Woynicz, just a moment. [14]

Mr. Riseley: Yes. There is an objection here.

The Court: You are all talking at the same time. Try the case with some regularity. Read the question to him again.

Q. (By Mr. Riseley): Mr. Woynicz, will you tell the Judge what the effect was on you when you learned your brother had been killed in Siberia?

A. I was so depressed. It was really the best friend I had.

Q. Were you working at that time?

A. Yes; I been working for the New York Thread Grinding Corporation.

Q. Did you have a son who was in the service?

A. Yes, Leonard. He volunteered in 1940. I am not sure.

Q. In March, 1940, did you have an appendicitis trouble?

(Testimony of Leonard Woynicz.)

A. Yes. I was operated in 1941.

Q. And in June, 1941, did you have an operation? A. Yes.

Q. And what was the operation for?

A. Appendicitis.

Q. Were there any complications to that operation?

A. Yes. I had peritonitis, and then after that the incision opened. I had to wear the plate because my intestines would come out.

Q. In March, 1942, did you have another condition arising from that operation? [15]

A. Yes. I had operation to repair the hernia, I guess, and then 10 days later my gall bladder was removed.

Q. On May 13, 1942, the doctor gave you some advice as to where you should live, did he not?

A. I am mixed up. You asked me about the second operation?

Q. Where were you living from 1932 until early in 1942? Where did you live?

A. 1932, in 2929 Wellman Avenue.

Q. When did you move from Wellman Avenue?

A. I moved—I can't recall the date, but because my intestines used to come out the doctor forbid me to ride in the subway; so I moved to walking distance of the shop.

Q. On August 6, 1942, were you served with some papers?

(Testimony of Leonard Woynicz.)

A. I don't know now the date, but I was served with the summons. I don't recall the exact date.

Q. What was the effect on you when you got those papers?

A. Because all accusations was false I thought I would drop dead. I was working 16 hours a day, and they accused me that I was talking with the women.

Q. Your son was in the service at that time?

A. Yes, sir.

Q. Were you concerned about him?

A. Very much.

Q. Did you sleep well? [16]

A. I couldn't sleep that time.

Q. What would you do when you went to bed?

A. Well, sometimes lay and think what is it my wife is doing.

Q. Did you cry? A. Yes.

Q. Did you have any trouble with muscular trembling?

A. Yes. My stomach—I couldn't hold anything in the stomach.

Q. Did you have any trouble with losing things when you were working at the shop?

A. I have sometimes lose my way to the shop, and some people could talk to me and I couldn't even hear what they talking about. I was in charge that time of the heat treatment department, a very dangerous thing, and many times I was burn myself because I forget that you could not put any water in liquid fire.

(Testimony of Leonard Woynicz.)

Q. You say sometimes you would get lost walking to the shop? A. Yes.

Q. Tell us about that.

A. Well, I either didn't reach the shop or forget to look where I am and I have 14 or 15 blocks to walk.

Q. You had been familiar with the way there before?

A. Yes; I was walking there for quite a long time.

Q. Would you ever lose any of the parts that were given [17] you?

A. It is hard to tell you. I couldn't remember, my mind was such I forgot. I was told many times maybe I order something. Where is it? I don't even remember I order something.

Q. Did you ever think about death or talk about it?

A. I just talk to God that I be killed.

Q. Did you ever have any fears of insanity?

A. Well, I thought I was insane that time because I could not understand what was going on.

Q. What did you finally do with the papers that were served on you?

A. Well, I took the first ones to a lawyer, Mr. Small, and he told me he didn't handle those things. He wanted to hand it to somebody else. My partner recommended Mr. Zimmerman, so I had Mr. Zimmerman to handle the papers.

Q. Did you tell Mr. Zimmerman about your case? A. Yes.

(Testimony of Leonard Woynicz.)

Q. Did you ever have any discussion with Mr. Zimmerman about Moscow trials?

A. This come during the discussion. You see, he didn't want to take—I wanted to go to court because I was innocent. I believed the United States court will not persecute the fellow when he is not guilty. Well, on one way or the other, he didn't want to accept any witness. I had a hundred men working. I open the shop for them all day long until 8:00 o'clock in the evening. I told him they all will witness with me that I never even went to lunch downstairs. That is including Sundays and holidays. And he says, "You cannot do that." "The jury will believe them, and you pay it. You do it." And my friends the same thing. One friend was I helped him out and he was with me four years.

Mr. Weber: I dislike to interrupt, but I believe the question was: What conversation was had with Mr. Zimmerman.

A. And he refused all those statements, and I told him: "Here it looks the same thing with Moscow trial. One side can tell anything and the other side cannot bring any witnesses." He said, "Well, that is almost the same thing." He says, "No jury will accept the testimony of such a witness."

Q. (By Mr. Riseley): Did you talk about Moscow trials much?

A. Well, he refused. He says, "Here, it will be the same thing." He only wanted to accept testimony by my daughter who is present over there.

(Testimony of Leonard Woynicz.)

Whatever he asked her I don't know, but he told—he said, “In your own handwriting and you will sign that and I will accept her as a witness.” And some way I don't want my daughter to testify. I don't know. I wouldn't do it. I told her that is Moscow style. From that time on I just agreed to sign anything. I didn't care what I did.

Q. Do you recall one incident when your daughter was [19] in Mr. Zimmerman's office?

A. That is what I told you. She was there and he took testimony from her and requested her to sign her own handwriting against the mother. I thought no. Not matter what the mother was, I don't want the child to testify against the mother. I don't know what she told him. I wasn't there.

Q. Do you recall one incident when she was crying in his office?

Mr. Weber: Objected to as irrelevant.

A. Well, she could be crying——

Mr. Weber: Just a moment. Objected to as irrelevant.

The Court: Sustained.

Mr. Riseley: I offer to show, if the court please——

The Court: The court has ruled. Go ahead.

Mr. Riseley: I beg pardon?

The Court: The court has ruled. Go ahead.

Mr. Riseley: Yes, sir.

Q. Mr. Woynicz, during this period of August and September of 1942 did you have any pains?

(Testimony of Leonard Woynicz.)

A. Yes; I had the pains in the head and stomach, and the headache.

Q. And vomiting? A. No vomiting.

Q. Do you remember going to Mr. Zimmerman's office on September the 22nd, 1942? [20]

A. I don't recall the exact date.

Q. Do you remember of going to Mr. Zimmerman's office at the time the settlement agreement was signed?

A. Yes. Yes; I remember.

Q. Would you tell us what you remember about that day and how you felt that day?

A. Well, just before that day of that signing, my partners and my children went to my wife to stop her. I didn't want to break up the home. I want by any means to continue living together. But they all come with the same answer. No; she would not under any consideration. So I have nothing to live for and I sign it.

Q. Was the agreement read to you at that time?

A. Evidently it was read, but——

Q. Do you recall it being read to you?

A. My memory was so bad. Evidently. I wouldn't deny it probably was read.

Q. Did you understand it?

A. No; I did not, not all of it. I understand quite a few part of it. Some part of it I still do not understand.

Q. Did you ever tell anybody that you thought you would be better off if you were dead?

(Testimony of Leonard Woynicz.)

Mr. Weber: Objected to as incompetent.

The Court: Sustained.

Q. (By Mr. Riseley): Did you ever have any trouble [21] eating?

Mr. Weber: Objected to as irrelevant.

The Court: What is it you wish to show?

Mr. Riseley: To show the operative symptoms of the incompetency.

The Court: I cant' hear you. Speak out.

Mr. Riseley: To show the symptoms of incompetency, to lay the foundation for my expert testimony.

The Court: Very well, go ahead.

(Question read by the reporter.)

A. Yes. I couldn't hold it on my stomach. My stomach was so nervous I could not eat nothing.

Q. (By Mr. Riseley): Mr. Woynicz, you mentioned that you talked to Mr. Zimmerman about the Moscow trials. What was your impression of these Moscow trials and how did they fit into this picture here?

Mr. Weber: Objected to as irrelevant, incompetent and immaterial, also as to form.

The Court: Sustained.

Q. (By Mr. Riseley): Would you tell us what you said to Mr. Zimmerman about the Moscow trials?

The Witness: I didn't get that.

Q. Would you tell us what you said to Mr. Zimmerman about the Moscow trials?

(Testimony of Leonard Woynicz.)

Mr. Weber: I believe that has been asked and answered, [22] has it not?

Mr. Riseley: I think he mentioned it.

The Court: Well, go ahead. Let us hurry up here.

A. Well, just, you know, they had no chance to talk. I told him so. So they had to admit they hadn't had a chance. There was no talking. There was no chance for people. I say, here, it looks like here the same thing. I cannot bring any witness. I can't testify myself. And I said what I say was all false and the other part was all true.

Q. Did you understand Mr. Zimmerman to tell you that it would be a Moscow trial?

A. Well, I couldn't tell that, because my memory is very hazy as to that. But he just don't expect anything about it, or something like that.

Q. When the papers were first served on you did you call somebody up?

A. When the summons was served on me, I was really shocked so much I thought it was a joke. I called Mr. Klaw and asked him if that is a joke, because everything was false. He said, "No; it is no joke. It is all true what is said there."

Q. Were you under a doctor's care at this time?

A. Yes.

Q. Was the doctor prescribing for you?

A. First of all, he prescribed me to move near the shop [23] and wear the belt that was holding my hernia.

(Testimony of Leonard Woynicz.)

Q. Was he giving you any pills to make you sleep?

A. Yes; because I could not sleep. He prescribed me something, if I remember that. I couldn't repeat it only once, the medicine was so strong that I could only get it only once.

Q. Did he prescribe once for you or more than once?

A. Well, he repeat again. He gave me another prescription.

Q. Did you think about your father during that time?

A. Yes; I was thinking a lot. My father did suicide when I was 7 years old. Maybe that is shame to think about committing suicide when you have children. But I did not commit, because I knew it was a mistake my father did. I did not want to leave the children with the same feeling that I had to my father.

Q. Now, in the presence of Mr. Simon—who is Mr. Simon?

A. I really don't know. He had a room in the same floor with Mr. Zimmerman. If he was partner or not I don't know. I call on him and he notarized the signature when I signed the papers. I think he was. He was partner at that time of Mr. Zimmerman, but he had nothing to do at all with the case. He just spoke of a few things, but we never discussed with him.

Q. Was he present at conferences between you and Mr. [24] Zimmerman?

A. No.

(Testimony of Leonard Woynicz.)

Q. Any of them?

A. Maybe the last one before I signed, because he was present to notarize the thing. Probably he was at that time, but no discussion with him. The discussion was with Mr. Zimmerman. They had absolutely separate rooms, closed door, and I spoke to him a few times just. I even did not know Simon's name until you recall me. I didn't know what his name was.

Q. Did Mr. Zimmerman tell you that if you went to court you would lose?

A. He said that you have no right to stand on something like—I cannot recall the exact words. He said it is no use to go, you lose it.

Q. Did you have any difficulty in understanding what Mr. Zimmerman said to you when he was explaining things to you?

A. Well, many times, because at that time I had bad English, now, too, but at that time it was absolutely due to mental condition, many times I couldn't understand what he was talking about. So he repeat me and repeat more or less I had to agree all the time.

Q. What is your native tongue? A. Polish.

Q. Does Mr. Zimmerman speak Polish? [25]

A. No. I never even asked him. Probably he knows. I never tried to speak it to him in Polish.

Q. Did you ever have any other lapses of memory?

(Testimony of Leonard Woynicz.)

A. Many times, but because of that I don't remember things what happened.

Q. Could you give us some examples of things that you did?

A. I know that many times a customer come and ask me something and I don't recall, to bring him tools or something. Then he comes in and I don't know why he come for, and I was ashamed to go back and ask what he wanted. I was ashamed.

Q. Did you ever experience any feverish feeling?

A. I was shivering all the time. That is what the doctor prescribe me some medicine what quiet me down.

Q. Did you understand the paper you signed that day in Mr. Zimmerman's office?

A. I still don't understand quite a few things in that paper.

Q. In April, 1943, were you still under a doctor's care? Did you have an operation?

A. Yes. I had two operations. I answered before.

Q. Tell us what you had.

A. I couldn't understand it any more. You see, there was so much coming out——

Mr. Weber: Just a moment. This is objected to. It is [26] about a year after the execution of the agreement.

The Witness: It was six months after, that was.

The Court: Why go into it so late after the execution of this agreement?

(Testimony of Leonard Woynicz.)

Mr. Riseley: Well, in proving insanity you can prove things that happened before or conditions that happened afterward to relate back. That is one point.

And the second point, he has introduced into evidence our letter repudiating the agreement, disaffirming the agreement of 1947. And until he disaffirmed the agreement, until his recovery in 1947, his mental condition was substantially the same. And then he went to Florida on the doctor's orders and began to recover his senses, and went to his attorneys down there and they disaffirmed the agreement on the ground that it was improperly procured, although admitting, as the letter says, that he was still obligated to support the woman who was his wife. And then after that, he paid her \$50.00 a month instead of \$50.00 a week as he had been under the agreement. And they have introduced the letter of 1947, and counsel in his opening statement suggested that maybe by acting under this agreement, even though it had been improperly procured while the man was incompetent, that he might have ratified it, I guess, by making the payments under it, might have admitted it was good.

The Court: Well, go ahead. [27]

Q. (By Mr. Riseley): You had an operation in April, 1943?

A. Yes; April, whatever date it was. Then 10 days later I was operated on for gall bladder.

Q. And you were under the doctor's care?

(Testimony of Leonard Woynicz.)

A. Dr. Bogatka. Dr. Anthony Bogatka.

Q. Then you were under the doctor's care from September the 22nd, 1942, when the agreement was signed, until you went to Florida? A. Yes.

Q. And you were advised by a doctor to give up your work and go to Florida?

A. Yes. Well, the work was done——

The Court: Speak out, speak out.

A. The work was finished. The shop was out entirely. One partner died. He had a heart stroke. And we just dissolved entirely in December, 1946. At that time the doctor said I was a very sick man that time, and he told me to go to Florida to recuperate.

Q. Was your mental condition about the same during this entire period from September, 1942, until you went to Florida early in 1947?

A. That is right. I had the two doctors there and they cured me up. I couldn't walk, I couldn't move my arms or nothing. But I say I was really cured after two years in [28] Florida. I was absolutely like another born.

Q. Prior to 1942, when you signed this agreement, I refer your attention to an incident that happened at Camp Upton. Would you tell the Court about that?

A. Well, our relations——

Mr. Weber: Is this relating to the mental capacity, Mr. Riseley?

(Testimony of Leonard Woynicz.)

Mr. Riseley: Yes. It is one of the outward forces that pressed in on him.

A. My boy was in Camp Upton and he is supposed to be shipped next week. We come, all family, all friends came there. We came there and was allowed to visit. We wanted to go all together to tell him good-bye and cheer him up. My wife refused absolutely to go. My son, my daughter, my niece, my nephew, and she says she will go. There was two friends worked there. She says she will go. Their names are Lucy and Helen. She says she will go to see boy with them. When we came to Camp Upton we spend all day long, waiting, and she didn't show up. We come home. She was home, and ask her, "Why you didn't come to see Leonard? Why didn't you see him? He will be shipped next week." "That is my business." That is all she said on this. I see there is no use. I am not the judge to condemn her or not, but she was not a mother that time.

Mr. Weber: I dislike to interrupt, but I see absolutely [29] no relevance to any issues in this action between that narrative and the installments due under the separation agreement. I asked Mr. Riseley whether this had any connection with any issue of mental competency. He said it did, but obviously we are going far afield.

The Witness: It just made me crazy.

The Court: What have you got to say to that?

Mr. Riseley: I will submit, your Honor, that on

(Testimony of Leonard Woynicz.)

this issue almost everything that happens to a man or everything that a man thinks is relevant, because it either shows that he was competent or that he was incompetent. I am quoting Dr. Wigmore on the subject. I do not believe that it is very far afield. I think I have covered considerable ground since I have started here less than a half hour ago. He has not gone very far afield. This, as he was just getting on to say, was the emotional effect upon him of this Camp Upton incident.

The Court: Go ahead.

The Witness: That upset me so much because that was our first son. I was in army myself. I know what the soldier is; I know what the danger is ahead of him. And she, even no matter what was, she should go and see him. That made me think in the mind that the mother could do such a thing to her son.

The Court: Take a recess until 2:00 o'clock.

(Whereupon, a recess was taken until 2:00 o'clock p.m. of the same day, Tuesday, March 7, 1950.) [30]

Los Angeles, California, Tuesday, March 7, 1950

2:00 P.M.

LEONARD WOYNICZ

(Also known as Leonard Woynicz Sianozecki)
recalled.

Direct Examination
(Resumed)

By Mr. Riseley:

Q. Directing your attention to November, 1942, Mr. Woynicz, did you have an additional health problem at that time?

A. Yes. I had a first attack of gall bladder. It was so severe that we had to call the doctor at night. He come about 2:00 o'clock at night. And then after treatments, you know, for a week or so, it subsided, but finally I had to go under an operation.

Q. Directing your attention to around September 22, 1942, in that period in there were you concerned with trains in any way?

A. I don't get you.

Q. With trains, railroad trains.

A. Well, traveling to work.

Q. Would you tell the Judge in what way you thought about the trains?

A. Well, I would be ashamed to tell, but I hoped the train would kill me and I would be done with everything.

Q. On that line did you consider any other methods, Mr. Woynicz? [31]

A. In the Russian Army, in the demolition squad

(Testimony of Leonard Woynicz.)

—I was in the Russian Army with the demolition squad and I saw what the effects, you know, of dynamite came to. And so I considered if I would have peace if I committed suicide that way, and it would be no trouble to bury me no more. I would be disintegrated entirely.

Mr. Riseley: Cross-examine.

The Court: How old are you?

The Witness: 65, your Honor.

The Court: 65. How old were you when you went into the army? Where were you when you went into the army?

The Witness: In the Turkish Army, Central Asia, four and a half years I was.

The Court: How many years were you in the army?

The Witness: Four and one-half years, your Honor.

The Court: How many?

The Witness: Four and one-half years in the Turkish war, the hottest place in the world.

The Court: Did you go through the first world war with the army?

The Witness: No; I was not. I was working and I was just to be called.

The Court: In the first world war?

The Witness: Yes. I was working. I just was to be called. I was married this time. [32]

The Court: You did not serve any in the first or second world wars?

The Witness: No.

(Testimony of Leonard Woynicz.)

Cross-Examination

By Mr. Weber:

Q. Mr. Woynicz, you became president of the New York Thread Manufacturing Corporation in 1940? A. Yes, sir.

Q. And you also became the general manager of that company at that time? A. Yes.

Q. And you remained the president of that corporation continuously until December, 1946?

A. Right.

Q. And general manager? A. Yes.

Q. How many people were working for you around September of 1942?

A. About a hundred and fifty or one hundred and sixty somewhere.

Q. At that time did you sign checks for the corporation? A. Yes; I did.

Q. Did you also sign the contracts that the Government entered into with that corporation?

A. Not always. [33]

Q. Yours was one of the signatures that was customarily affixed to contracts?

A. Yes. The secretary signed it.

Q. And you signed as president?

A. Not only very important.

Q. The important contracts that the Government had with the corporation you signed as president?

A. That is right.

Q. Mr. Woynicz, you were going to your place of business every day? A. Yes.

(Testimony of Leonard Woynicz.)

Q. You were supervising activities in the shop?

A. Yes.

Q. Giving instructions to the help?

A. Before. Not during that time, because when we start opening——

Q. You engaged in conferences with some of your associates about contracts that the Government was offering to the corporation?

A. Only in the mechanical.

Q. You engaged in conferences with Mr. Barudin in that respect? A. That is correct.

Q. As to how to make certain items?

A. Yes, sir. [34]

Q. When the papers were served on you in this action that your wife brought, you knew that she was suing you, did you not? A. Right.

Q. You knew that she was suing for separation?

A. Yes.

Q. You knew that she was asking you for temporary alimony? A. Yes.

Q. You knew that she was asking you for counsel fees? A. Yes, sir.

Q. And after you telephoned Mr. Klaw, the attorney for your wife in that action, you went to see an attorney by the name of Mr. Small, is that right? A. That is right.

Q. And he said he did not handle that kind of a case? A. Yes.

Q. And your partner, Mr. Barudin, was it, recommended you go to Judge J. Charles Zimmerman, is that right? A. Right.

Q. He was then a judge of the City Court of

(Testimony of Leonard Woynicz.)

Long Beach, New York?

A. I don't know what he was.

Q. And you went to see Mr. Zimmerman after your partner recommended him? [35]

A. That is right.

Q. When you went to Mr. Zimmerman's office did he tell you what the case was about?

A. Yes.

Q. He told you your wife was suing you for separation? A. Correct.

Q. He told you that your wife wanted alimony?

A. Yes.

Q. And you new that meant support, did you not? A. I don't get you.

Q. You knew that alimony meant support?

A. Yes.

Q. And you knew that your wife was asking for counsel fees? A. Yes.

Q. How many times did you go to Judge Zimmerman's office? A. I cannot recall.

Q. Five or six times would you say?

A. Not any more than that.

Q. In the course of those visits did you discuss a number of subjects involved in connection with your wife's lawsuit? A. Yes.

Q. Did you discuss with Judge Zimmerman the fact that your earnings were a matter of interest to the court in view of the fact that your wife was

(Testimony of Leonard Woynicz.)

asking for alimony? [36] A. I did not.

Q. Did you discuss with Mr. Zimmerman your earnings? A. No; we did not.

Q. Well, don't you remember that Mr. Zimmerman told you that in a case of alimony it was customary to determine the man's earnings before the court would award alimony? A. It was not.

Q. Mr. Woynicz, I direct your attention to your deposition in this case. You recall giving your testimony in a deposition? A. Yes.

Q. I direct your attention to page 35, beginning at line 7 to line 24, and ask you whether or not you gave the following answers in response to the following questions:

“Q. In your discussions with Mr. Zimmerman, do you remember Mr. Zimmerman discussing with you what your earnings were at that time?

“A. Possibly, maybe not. I don't recall.

“Q. Well, don't you remember Mr. Zimmerman telling you that on a motion for temporary alimony, the amount of money that you were making was a matter of importance? A. Yes.

“Q. And don't you remember you told Mr. Zimmerman how much money you were then earning as president of [37] the New York Thread Grinding Corporation? A. Possibly I did.

“Q. Now, did Mr. Zimmerman explain to you that on motions for temporary alimony, the more money the husband earned the more money the wife was entitled to?

(Testimony of Leonard Woynicz.)

“A. Yes, he frightened me plenty.

“Q. He told you that? A. Yes.”

Did you give those answers to those questions?

A. Yes; I did, but I repeat still that I did not discuss my earnings with him.

Q. In other words, when you testified in your deposition in the manner in which I just read to you, you were in error, is that your testimony?

A. Right here is what I said: “Possibly, maybe not.”

Q. Well, is it your recollection now, Mr. Woynicz?

A. My recollection was so hazy, I was in a haze so much and the question was asked when I still don’t understand the next question.

Q. You recall the occasion when you went up to Judge Zimmerman’s office, do you not?

A. Yes.

Q. Do you recall discussing with him any other subjects that were connected with your wife’s action? [38]

A. In what way? What is your question?

Q. I show you the contract that was signed, Mr. Woynicz, Plaintiff’s Exhibit 1 in this trial, and ask you whether or not it is not a fact that you discussed with Mr. Zimmerman the question of your wife’s request to visit your son Robert? A. Yes.

Q. And you discussed that with Judge Zimmerman, is that right? A. Yes; I did.

(Testimony of Leonard Woynicz.)

Q. And at the time you were presented with a copy of this agreement you told Judge Zimmerman, did you not, that you wanted that paragraph stricken out? A. Yes.

Q. And that you did not want your wife to visit your son Robert?

A. Yes. It was such a plain language.

Q. You asked Judge Zimmerman that that be stricken out, is that right? A. That is right.

Q. And pursuant to your request he struck that out? A. Yes.

Q. I ask you whether or not it is not a fact, Mr. Woynicz, that in those meetings with Mr. Zimmerman you also discussed with him the question of removing from the house at 2929 Wellman Avenue? Didn't you discuss that? [39] A. Yes.

Q. And didn't Judge Zimmerman tell you that you would be obliged or you would be required to remove from those premises? Is that right.

A. Yes.

Q. And don't you remember you told him that you objected to the length of time that the contract gave you?

A. It was very plainly understood that I could not make it.

Q. And didn't you tell Mr. Zimmerman that you wanted the contract changed to give you more time to remove from the premises?

A. That is right; because I objected. I can understand that.

(Testimony of Leonard Woynicz.)

Q. In your visits to Mr. Zimmerman's office didn't you also tell him that you wanted an opportunity to remove the tools that belonged to Robert?

A. Correct.

Q. And you insisted that some such provision be put in that agreement, is that right?

A. I think that was provided in that.

Q. You saw that. You recognize that that was in the agreement, is that right? A. Yes.

Q. And that was something that you wanted Robert to have? [40]

A. That is right. It was so plain understood in plain language I could understand that.

Q. Didn't you also discuss with Mr. Zimmerman the fact that you did not want the payments to go on forever? A. Yes; I did.

Q. And when you were presented with the first draft of the agreement, you told Mr. Zimmerman that you didn't see why you should have to pay forever? A. Yes.

Q. And you told him that in the event of your wife's death, you wanted a provision that your obligation to pay would end; isn't that so?

A. Not the wife's death, but my death.

Q. And you told that to Mr. Zimmerman?

A. I don't believe that was drafted. Zimmerman didn't draft anything. Mr. Klaw, maybe, drafted the agreement. Mr. Zimmerman didn't do anything.

Q. When you went to Mr. Zimmerman's office to

(Testimony of Leonard Woynicz.)

look at the draft, you noticed that that provision was in there, did you not?

A. Maybe yes, maybe no.

Q. Well, didn't you tell Mr. Zimmerman—

A. I was concerned right away what was there, when I asked for a change of Robert's provision to take his tools.

Q. Didn't you also discuss with Mr. Zimmerman what was [41] to happen in the event that your wife remarried?

A. Well, I understand that, that my alimony would cease at that time on my death.

Q. Would stop?

A. Yes. That is very simple.

Q. And you discussed that with Mr. Zimmerman before you signed the agreement. A. Yes.

Q. When you signed the agreement did you discuss with Mr. Zimmerman the sum of \$350?

A. Yes.

Q. What was that for?

A. That was for Mr. Klaw.

Q. That was counsel fees for your wife's lawyer?

A. Yes. That was very plainly told.

Q. And you knew what that was for?

A. Yes; I knew that.

Q. And you wrote out a check for that, is that right? A. Yes.

Q. And at the time you wrote the check you knew that the agreement provided that \$350 would have to be paid to Mr. Klaw?

(Testimony of Leonard Woynicz.)

A. That is right.

Q. I show you a check dated September 23, 1942, purporting to bear your signature, Mr. Woynicz, in the amount of [42] \$350, and ask you whether you wrote that check? A. Yes; I did.

Q. Was this check given in payment of the counsel fees for Mr. Klaw? A. Yes.

Mr. Weber: I offer this in evidence.

The Court: Admitted.

The Clerk: That will be Plaintiff's Exhibit No. 6 into evidence.

Q. (By Mr. Weber): I show you another check dated September 23, 1942, Mr. Woynicz, purporting to bear your signature, in the sum of \$150.00.

A. Yes.

Q. And ask you what that was for.

A. That was part of the alimony.

Q. Under the agreement?

A. Under the agreement.

Q. And that was to cover three installments of alimony due under the agreement, is that right?

A. Yes.

Q. And you knew what it was for at the time you signed that check? A. Naturally.

Q. I show you another check dated September 28—strike that.

I offer this check in the sum of \$150.00 into evidence. [43]

The Clerk: Admitted, your Honor?

The Court: Admitted.

(Testimony of Leonard Woynicz.)

The Clerk: That will be Plaintiffs' Exhibit No. 7 into evidence.

Q. (By Mr. Weber): I show you a check dated September 28, 1942, and ask you whether or not you drew that check? A. Yes; I did.

Q. And that was in payment of an installment of \$50.00 due under the separation agreement which came due at that time? A. Yes.

Mr. Weber: I offer that into evidence.

The Court: Admitted.

The Clerk: Plaintiff's Exhibit No. 8 into evidence.

Q. (By Mr. Weber): I will just take one more check at random. I show you a check dated August 23, 1943, Mr. Woynicz, purporting to bear your signature and ask you whether you drew that check?

A. Yes, sir; I did.

Q. And is that check in payment of an installment of \$50.00 which became due under the agreement on that date? A. Yes.

Mr. Weber: I offer this into evidence.

The Court: Admitted.

The Clerk: Plaintiff's Exhibit No. 9 into evidence.

Q. (By Mr. Weber): And at the time you drew that check [44] you knew what it was for?

A. Yes.

Q. I show you a batch of checks encased in a rubber band, Mr. Woynicz, and ask you whether or not all of these checks——

(Testimony of Leonard Woynicz.)

A. Yes; I did.

Q. —bear your signature? A. Right.

Q. And they were checks given by you to your wife in payment of installments coming due under the agreement, is that right? A. That is right.

Mr. Weber: I offer them as one exhibit.

Mr. Riseley: Just a moment, counsel. Some of those checks in there are dated after October, 1947.

Mr. Weber: Those are the ones we have in a separate bundle there.

Mr. Riseley: Is it stipulated that there is no check in here dated after March, 1947?

Mr. Weber: I will accept that stipulation.

The Court: Very well.

Mr. Weber: May the record show that these come from the attorney for the defendant? I accept that stipulation.

The Court: Very well.

Mr. Weber: That the exhibit which I now offer contains [45] no check dated as of a date subsequent to March, 1947?

The Court: Admitted.

The Clerk: Plaintiff's Exhibit No. 10 into evidence, a group of checks.

Q. (By Mr. Weber): At the time you signed this agreement, Mr. Woynicz, do you recall Mr. Zimmerman was present? A. Yes.

Q. And Mr. Simon, his law associate, was also present?

(Testimony of Leonard Woynicz.)

A. At that time I didn't know what was his name, but he was.

Q. At any event he notarized your signature at the time you signed it, is that right? A. Yes.

Q. At the time of your visit to Mr. Zimmerman's office did you discuss with him the subject as to what was going to happen if times went bad?

A. Yes. May I tell something additional to that?

The Court: What?

The Witness: May I tell additional something to that question?

The Court: Yes; go ahead. Speak out loud.

The Witness: That was discussed at that time with him because I just could not understand how I could pay for life such an amount of money. And I asked Mr. Zimmerman to limit it. He said that is impossible; that there is only one way, only forever after agreement. And we agreed [46] that way, that if he is right, I will give him \$100.00 more; if not, he is supposed to give me back all my \$400. And I find out he was wrong.

Q. (By Mr. Weber): And in those meetings with Mr. Zimmerman didn't you discuss with him the fact that in view of the wartime earnings which you were making, the sum of \$50.00 a week—strike that. Didn't you discuss with him the fact that your earnings at that time were rather high?

A. Well, we didn't discuss that. We discuss only how much to pay.

Q. Didn't you discuss with him the fact that your

(Testimony of Leonard Woynicz.)

wife was to receive a life interest in the house at 2929 Wellman Avenue, Bronx?

A. Yes. But here is what was mistake.

Q. Did you discuss the fact that your wife wanted the life interest in that property?

A. Yes. But I thought the kids, when they would come from war, they would have a right to their house to live in it. And I know that when the kid come from war—he was five years in the war—three years he was there, and he had no room to live. I told him to go ahead and have one apartment, and then I find out he can't do that. I was sure to the last minute I have a right to occupy one apartment when he come from war. He deserved that. He was fighting for you, for me, for the whole United States. [47]

Q. I show you Plaintiff's Exhibit 1, Mr. Woynicz, and ask you whether or not the initials appearing on page 4 "L. W. S." are your initials?

A. Yes.

Q. Were those initials put on that page to indicate your approval of that change in the contract?

A. Right. It was such a plain thing.

Q. You were indicating your approval?

A. Yes; I did.

Q. That you wanted a change?

A. It was a plain thing to understand. I didn't understand the other things.

Q. I direct your attention to page 29 of your deposition, Mr. Woynicz, and ask you whether or

(Testimony of Leonard Woynicz.)

not you gave the following answers in reply to the following questions?

A. Which one?

Q. Beginning at line 3 and ending at line 8:

“Q. Do you recall any discussion with Mr. Zimmerman about what was to happen to the payments of \$50.00 a week in the event that your wife died?

“A. I think in that event I would stop payments.”

Mr. Riseley: There was no question.

Mr. Weber: Just a minute.

“Q. And Mr. Zimmerman explained that to you? A. Yes.” [48]

Q. Did you give those answers in reply to those questions at the time of your deposition?

A. Yes. I did not understand what you asked me for.

Q. Mr. Woynicz, would you——

A. Yes. I signed that. I signed it. But here, I put your correction. I put, when I corrected that thing, I put a question. There was no such question.

Q. Do you recall getting this deposition from Mr. Styskal? A. Yes; I signed it.

Q. You took it home with you? A. Yes.

Q. And you read it?

A. Yes. I put all the corrections there.

Q. I ask you whether or not all corrections appearing in this deposition were made by you in your handwriting? A. Yes.

(Testimony of Leonard Woynicz.)

Q. And that applies to every correction appearing in this deposition, is that right?

A. I put in the pencil.

Q. And you made these corrections in your own handwriting? A. Yes.

Q. And did you read this yourself or was Mr. Styskal present? [49]

A. No; I had it at home.

Q. Is this correction on page 11 also in your handwriting? A. Yes.

Mr. Weber: At this time I offer the entire deposition of the witness.

Mr. Riseley: I will object to the introduction of it on the ground it has never been filed with the clerk; and further, on the ground that the witness is here to testify and it should only be used for impeachment; and on the further ground of the irregular manner in which the deposition was corrected and handled after the deposition was taken. There was plenty of time for counsel to have filed this deposition and to have obtained the reporter's corrections, and signed a corrected deposition.

Mr. Weber: Are you stating that there are changes in that deposition made from the time it left Mr. Woynicz's hands?

Mr. Riseley: I am stating that the deposition is irregular and he has not explained these question marks that he made.

The Court: How was it taken? For whom was the deposition taken?

(Testimony of Leonard Woynicz.)

Mr. Weber: It was taken before a duly constituted reporter and it is duly certified in accordance with the Rules of this Court. The witness has signed it and the requisite certificates of the reporter are affixed, and the stipulation of [50] counsel is part of the record of the deposition.

The Court: What does the stipulation say?

Mr. Weber: That the deposition of the defendant may be taken as an adverse party. And the deposition is duly signed by the witness. He has made the corrections in his own hand.

The Court: When was that taken?

Mr. Weber: This was taken on the 28th of June, 1949.

Mr. Riseley: If I may point out to the Court, your Honor, at that time, although I was an attorney of record, I was not connected with this case.

The Court: If you are attorney of record, you are connected with it, if you are an attorney of record. If not, what are you doing on the record? Of course, you are connected with the case whenever your name appears in the record of the case.

Mr. Riseley: Then I might make the point that the attorneys of record at that time were L. J. Styskal and Jerry B. Riseley. In this deposition, for the defendant, it says "Anthony L. Styskal, Esq."

The Court: You said a moment ago you were attorney of record.

Mr. Riseley: Yes, sir.

(Testimony of Leonard Woynicz.)

The Court: What was done with this deposition? Why was it not filed with the clerk here and served? Was it served on the opposite party? [51]

Mr. Weber: No. The only reason for that was, associate counsel for the defendant, Mr. Styskal, gave it to me in order that I could conform my copy with respect to the corrections, and I made it available for Mr. Riseley before the opening of the trial for the same purpose. It was made available for the purpose of making corrections in my copy to correspond with those made by the witness in his handwriting. That was the only reason it came to my possession. It was done with the consent of Mr. Styskal, with the understanding that it was to be filed at the time of trial.

The Court: What understanding do you have reference to? Is that just among you attorneys?

Mr. Weber: Yes. There was just an informal understanding that I was to file it, and it was given to me, as I say, for the purpose of conforming my copy.

The Court: Why did you wait so long from June? *

Mr. Weber: The actual signing of it took place long after that. The actual signing of it took place——

The Court: Taken before a reporter in this court, you say?

Mr. Weber: Taken before official court reporters Abkin and Newman.

(Testimony of Leonard Woynicz.)

The Court: And certified to be correct?

Mr. Weber: Certified to be correct. The certificate is part of the record. [52]

The Court: Did counsel stipulate that it could be taken in that way?

Mr. Weber: Yes.

The Court: Is that of record?

Mr. Weber: Yes, the stipulation of counsel.

The Court: What is it? Read it.

Mr. Weber (Reading): "It Is Hereby Stipulated and Agreed by and between the respective parties to the above-entitled action that the testimony of _____" —the name of the witness is omitted— "a witness on the part of the Plaintiff in said cause, be taken before David Newman, a Notary Public in and for the County of Los Angeles, State of California, on Tuesday, the 28th day of June, 1949, beginning at the hour of 2:00 o'clock p.m. thereof, at 208 S. Beverly Drive, in the City of Los Angeles, County of Los Angeles, State of California, and if not completed on said day it will be continued from day to day thereafter until completed. That said deposition and testimony, when taken, may be read and used in evidence in said cause on any trial thereof or proceeding therein, subject to the same objections and exceptions, as if the said witness were personally present, but without objection or exception to the time, place or [53] manner of taking the same, or to the form of the question, unless noted at the time."

(Testimony of Leonard Woynicz.)

That is the stipulation and it is signed by Daniel A. Weber, Attorney for Plaintiff, and Anthony L. Styskal, Attorney for the Defendant.

The Court: It will be admitted.

The Clerk: Plaintiff's Exhibit No. 11 into evidence, deposition.

PLAINTIFF'S EXHIBIT No. 11

[Deposition of Leonard Woynicz Sianozecki, taken on behalf of the Plaintiff, June 28, 1949. See pages 281 to 326 of this printed record.]

(Received in evidence March 7, 1950.)

Q. (By Mr. Weber): This Dr. Bogatka whom you mentioned, he has been your family doctor, has he not? A. Yes.

Q. He has been your doctor for many years?

A. Yes.

Q. And he is a general practitioner?

A. Yes. He is surgical doctor. He is Professor of Surgery in Bellevue Hospital in New York.

Mr. Weber: No further questions.

Redirect Examination

By Mr. Riseley:

Q. Showing you Plaintiff's Exhibit No. 11, the

(Testimony of Leonard Woynicz.)

deposition, Mr. Woynicz, page 29, line 5, two question marks in pencil. Did you put those question marks there? A. Yes; I did.

Q. Did you put them there at the time you purportedly corrected the deposition? [54]

A. Yes; because that was not in the agreement. I could not understand that time. That does not appear in the agreement whatever, the case of my wife's death.

Q. In other words, you did not agree with the interpretation placed on your answer by the reporter, is that right? A. Yes.

Q. On page 28 here, from lines 4 through 18, all these pencil marks and "It all not true" written across there in handwriting, and "No, no, no," written several times in between those lines, and "He never told," did you write that?

A. Yes; I did, because it was wrong. I don't think even the question was completed that way. I doubt very much, because I tried. There is my daughter. You can ask her. I tried to conciliate to the last minute. I want to reconcile. I want my home to be in the contract, so I asked him for that, but he refused to do it.

Q. In your discussion with Mr. Weber it was mentioned about the children would have a place to live when they got back from the war. Did Mr. Zimmerman tell you that?

Mr. Weber: Just a moment, now. I do not believe that is a proper question because the issue here

(Testimony of Leonard Woynicz.)

is not whether or not a certain provision was actually agreed upon or whether it was a valid term of agreement. The question was originally, on my interrogatories of the witness, as to what was discussed, to show the comprehension of the witness of the [55] substance of the negotiations then pending. Whether or not the agreement originally, or whether or not the provision in its final form is something to which he originally objected is not a matter of any consequence. The question is: What was the agreement as finally signed? And the purpose of my questioning was limited to the issue as to whether or not a certain subject was discussed, and this question on redirect is improper.

Mr. Riseley: Well, I would submit, your Honor, that the question is how much he understood, and not just what was discussed. It is what he understood.

The Court: Before the instrument was signed?

Mr. Riseley: Yes; what he understood to be the agreement.

Mr. Weber: For example, I might say or anybody seeking a separation agreement might say: "I originally objected to paying \$100.00 a week. I wanted a smaller amount." That would not be relevant as to whether or not a certain subject was discussed and that the witness knew the agreement involved a particular subject, and not a question whether or not in its original form he was willing to go for that kind of a deal. That would entail a re-

(Testimony of Leonard Woynicz.)

examination of all the negotiations from the standpoint to see whether or not that is what he wanted.

By the same token, we can show that the plaintiff asked for much more and finally consented to \$50.00 as a means of [56] accomplishing this settlement; and it is no more competent for him to show that originally he did not want to pay X dollars, as it would be for us to show that we asked for a much larger sum.

The Court: Objection sustained.

Mr. Riseley: No further questions.

Mr. Weber: Just one question, Mr. Woynicz.

Recross-Examination

By Mr. Weber:

Q. After you took this deposition home to read it and made corrections, you had this notarized before your own attorney, did you not, Mr. Anthony L. Styskal? A. Yes.

Q. And he was your attorney at that time?

A. Yes.

Q. In this action?

A. Yes. He knew nothing about the case, anyway.

The Court: You have answered the question. Go ahead. He said he was; so go ahead.

Mr. Weber: That is all.

The Court: You are excused.

EDMUND GEORGE TANNER

called as a witness by the defendant, being first sworn, was examined and testified as follows:

The Clerk: Your full name? [57]

The Witness: Edmund George Tanner.

Direct Examination

By Mr. Riseley:

Q. Mr. Tanner, did you know the defendant, Leonard Woynicz, in the summer of 1942 and '3?

A. Yes. The defendant, Mr. Woynicz, is my uncle, and I had been associated with him for the period from 1940 until 1943, when I left for the army. I had worked for him on the average of five days a week during that entire period.

Q. And where did you work for him?

A. I worked for him at the New York Thread Grinding Corporation, where he was president, and at that time I was a sub-contractor; in other words, working on a piecework basis and with a small crew of men under myself.

Mr. Weber: Just a moment, Mr. Tanner. Would you limit yourself to the questions that counsel is to ask you?

Q. (By Mr. Riseley): What was Mr. Woynicz's capacity where it came in contact with your capacity, Mr. Tanner?

Mr. Weber: Objected to as to form.

The Court: His capacity?

Mr. Riseley: Yes; his capacity at the New York Thread Grinding Corporation.

(Testimony of Edmund George Tanner.)

The Court: He may answer. Overruled.

A. Mr. Woynicz was president of New York Thread Grinding Corporation and, as some of his duties, he had full charge of [58] heat-treating and purchase of supplies and tools for the establishment. In those latter two capacities I had frequent contact with him; I would say about two or three times a day.

Q. (By Mr. Riseley): And what was the nature of this contact with him?

A. As a sub-contractor it was my duty to make up different parts on a piecework basis, and therefore I needed supplies and tools to do this; and not only that, I needed heat-treating done on the parts, which were in general hardening, and I required heat-treating in, I would say, most instances.

Q. And what would your procedure be to get this done?

A. In requiring any materials and supplies, I would go to Mr. Woynicz directly, give him a description of what I needed, when I needed it, and try to get from him an estimate of when I would get the items in question. And in the matter of heat-treating, I would bring the pieces that I had ready for heat-treating, give them to him, tell him what I wanted done, and in the same way trying to get an estimate of when I would get them back.

Q. In the summer of 1942, Mr. Tanner, did you notice anything out of the ordinary course of business about your relationship with Mr. Woynicz, that

(Testimony of Edmund George Tanner.)

is, in the shop there when you had the heat-treating done and the ordering?

Mr. Weber: Objected to as too indefinite. [59]

The Court: Sustained, indefinite. Can't you confine it to something?

Q. (By Mr. Riseley): In about August, 1942, Mr. Tanner, would you describe the way you gave these parts to Mr. Woynicz for heat-treating and the result?

Mr. Weber: Objected to as irrelevant.

The Court: Overruled.

A. Well, I can give you a description of his personal conduct at the time that I submitted parts to him for heat treatment and my results in trying to obtain them. On several occasions—enough to cause me to realize that it was much more——

The Court: That is not stating what was done. What was done?

A. On occasion I gave Mr. Woynicz parts to be heat-treated and requested that they be presented to me on the next day, and on the next day I returned, called Mr. Woynicz, and finally got him to realize that I was asking him for certain parts. He did not know which parts I had meant. I gave him full description and he finally started to look through his shop coat pockets and through his desk to see if he could find them. After a while he found them in a desk where he had put them the day before and had forgotten entirely about heat-treating them.

Q. (By Mr. Riseley): Did this ever happen again? [60]

(Testimony of Edmund George Tanner.)

A. It happened on other occasions. On one occasion I had asked for certain tools he had promised me, I think, the following day, and I returned the following day. He had again started to look in his coat pockets and his desk, and finally went out of the room into the tool room where his safe was kept for all tools and supplies. I remained in his office about three or four minutes. He did not return. Finally I decided to go to the tool room and see what happened there. When I arrived there he had gone, and gone to some other part of the shop without even bothering to come back to the office. And when I followed——

Mr. Weber: Just a moment. I think the witness is going far afield. Where he went after a certain event is irrelevant.

The Witness: It is not a full description of the event.

The Court: Go ahead.

A. I finally found Mr. Woynicz and asked him about the tools that he had promised me. He admitted that he had forgotten entirely what he went in the tool room to get.

Q. (By Mr. Riseley): Did you have any conversations with him at that time?

Mr. Weber: Objected to as indefinite.

Q. (By Mr. Riseley): In the month of September, 1942; did you have any conversations with him at that time?

A. Conversations on what subject?

(Testimony of Edmund George Tanner.)

Q. Well, on his work there. [61] A. Yes.

Q. Would you relate what the conversation was?

Mr. Weber: Objected to as indefinite. It could have been on a number of different subjects having nothing to do with the issues in this case.

The Court: Confine it to the issues in this case. We are not going into general conversations on any or everything. I am asking, counsel. What do you say about it?

Mr. Riseley: Anything that a man says reflects what his mental condition is to some extent.

The Court: Go ahead.

A. Well, Mr. Woynicz in that period of time had many lapses of memory with regards to conversation. In addition, he had a habit of being hard of hearing on the first approach. On one occasion I went into the office, called him, called him two or three times. He did not answer, even though he was only two or three feet away from me. Finally he noticed I was there and asked me what I wanted; and I told him I wanted certain supplies for a job. While he went about ordering the supplies distractions would come in. On this one occasion someone wanted him from the neighboring office and he was requested to answer a phone call. While he answered that, he did not wish to answer the phone at the time. When he turned back to me, he had forgotten what he was doing. I had to remind him once again that he was in the process of [62] ordering certain supplies.

(Testimony of Edmund George Tanner.)

Q. (By Mr. Riseley): Did he ever fail to recognize you during this period of September, 1942?

A. On a few occasions he would walk past me where I was standing in the shop, and even though I had spoken, I would fail to get any sign of recognition from him. On one particular occasion I needed something from him, went after him and finally obtained his attention. At the time he appeared startled and admitted that he had not seen me when he had passed by before.

Q. What language did Mr. Woynicz speak in around the shop mostly?

A. He spoke English, Polish, and Russian.

Q. Did you ever observe him in any political discussions? A. Yes.

Mr. Weber: Objected to as irrelevant.

The Court: Overruled.

A. Yes, he had.

Q. (By Mr. Riseley): Would you relate the incidents?

A. I observed him in political discussions in both English and Polish, since I can understand both pretty well. Well, at the time of—will you please say just what aspect of political discussions you would like me to tell about?

Q. Tell what he said during these political discussions. What did he say? [63]

Mr. Weber: May we have some statement of time?

(Testimony of Edmund George Tanner.)

Q. (By Mr. Riseley): When were these political discussions that you observed him in?

A. I would say in the early and later part of 1942. The general political discussion related to the then Russian regime at the time; and he made no pains about saying that he despise the Russian regime, thought they were nothing but—well, the very worst kind of people you could expect. He was very vehement on the subject and repeated over and over again that there was no justice in Russia and similar statements.

Q. Now, did you observe in his outward manifestations at that time when you looked at him? How did he appear to you? What did you see?

A. Well, Mr. Woynicz, when excited or when talking and great mental strain on a subject, uses great motions of arms, will wave his arms about. He has more than usual trouble with his speech at such times and his voice becomes very loud.

Q. Did he ever complain to you of being tired?

A. Yes; on numerous occasions in the morning when I would first drop into his office and see him, he would remark that he felt very tired.

Q. Would he ever use profanity during this period?

A. No. Mr. Woynicz does not use profanity as a rule.

Q. Did he ever use it on special events or in excess [64] or more than he usually had before?

A. I would say that he used it, in general, only

(Testimony of Edmund George Tanner.)

in political discussions, and that usually in referring to the Soviet regime and enemies of democracy at the time.

Q. Did he ever discuss with you his concern over his brother in Russia?

A. Yes; on many times he was quite perturbed at what would happen to him.

Q. What would he say?

Mr. Weber: May we have a statement of time, please?

Q. (By Mr. Riseley): When? When did he talk about his brother?

A. I cannot carry it down to any month. Probably in a period of early 1942 and probably up to the summer and fall of 1942. I forgot your question.

Q. Do you recall what he said about his brother?

A. He was very fearful of his life, since his brother is a professor or was a professor at the University in Poland and, as such, was considered an enemy of the people inasmuch as the Soviet regime was concerned.

Mr. Riseley: No further questions. Cross-examine.

Mr. Weber: Just a couple.

Cross-Examination

By Mr. Weber:

Q. Mr. Tanner, when did you leave the New York Thread [65] Grinding Corporation?

A. March, 1943.

(Testimony of Edmund George Tanner.)

Q. And Mr. Woynicz continued as president, to your knowledge, up until the time you left?

A. That is right.

Q. How many people were working during all this interval for the New York Thread Grinding Corporation?

A. I would say the average employed at that time was about 175.

Q. It was a rather busy place on wartime contracts? A. That is right.

Q. Were you ever present when Mr. Woynicz executed any contracts with the Government?

A. No.

Q. You are a nephew of Mr. Woynicz?

A. That is right.

Mr. Weber: No further questions.

Mr. Riseley: No further questions.

The Court: You are excused.

Mr. Riseley: Your Honor, just after this witness, I wonder if we might have a short recess, because I will be ready for my expert after this witness comes on.

The Court: Can you call this witness now, then?

Mr. Riseley: Mrs. Kuhrke. [66]

WANDA WOYNICZ KUHRKE

called as a witness by the defendant, being first sworn, was examined and testified as follows:

The Clerk: Your name?

The Witness: Wanda Woynicz Kuhrke.

Direct Examination

By Mr. Riseley:

Q. You are the daughter of the plaintiff and the daughter of the defendant? A. I am.

Q. Early in 1942 you lived on Wellman Avenue with the parties? A. I did.

Q. What language was spoken at home?

A. Well, mostly Polish, I would say, some English, and I believe some Russian.

Q. Were you familiar with your father's condition of health in 1942? A. I was.

Q. Would you tell the Court what it was early in 1942?

A. Well, in addition to the appendix and the fact of having the family difficulty arising at that time, I believe he was under a very severe strain at all times.

Q. Directing your attention to August the 6th, 1942, Mrs. Kuhrke, did you have any conversation with your father [67] that day?

A. Well, I don't recall if it was August the 6th, but it was somewhere in that period that he called me and asked me to come to see him, and at that particular time he had told me of the fact that he

(Testimony of Wanda Woynicz Kuhrke.)

was summoned with these papers and that my mother was suing him for a separation.

Q. Did you go to see him that day?

A. As I say, I don't know if it was August the 6th, but I did go to see him around that period of time.

Q. And where did you go?

A. I went to his office.

Q. Did you have a conversation with him there?

A. I did.

Q. Would you relate what he said at that time?

A. Well, at that time we had a private conversation behind closed doors, where he explained to me——

Mr. Weber: Just a moment. If this has to do with the merits or demerits of the separation action, I object to it as incompetent, irrelevant and immaterial.

Mr. Riseley: It is merely conduct and declaration of the person whose incompetency is in question, your Honor, that I am seeking to show.

The Court: You are not attempting to try all of the merits of the separation?

Mr. Riseley: No; not at all. It is merely to show his [68] declarations, to show the competency at that time.

The Court: Very well, overruled.

The Witness: Would you repeat that question, please?

(Testimony of Wanda Woynicz Kuhrke.)

Q. (By Mr. Riseley): Would you relate the conversation at that time?

A. Well, at the time that my father told me of the separation action, I believe both of us were very shocked. At least I knew something was brewing, but I didn't know what, but I didn't know it was as severe as my father had told me. I mean the feature that I am trying to bring out is that to me it was such a shock that I just started crying and my father joined in with me.

Mr. Weber: I move the entire answer be stricken on the ground that it is irrelevant, incompetent and immaterial, and has nothing to do with evidencing the mental state or the state of mind or mental competence of the defendant. The natural distress of this witness at the family domestic difficulties is a matter which does not throw any light on the question whether or not at the time this contract was signed Mr. Woynicz understood the nature of the transaction.

The Court: Sustained.

Q. (By Mr. Riseley): Now tell me what your father said to you that day—not what you thought or what the fact was, but what he said to you that day.

A. You mean in regards to the separation papers? [69]

Q. Yes; in regard to anything.

A. Well, in regards to the separation papers, my father told me that he felt the whole statement was false, and which I myself believed were false.

(Testimony of Wanda Woynicz Kuhrke.)

Mr. Weber: Well, I move what the witness believes be stricken.

Mr. Riseley: Just confine yourself to what your father said.

The Court: It may be stricken, what she believed. What was said?

A. And that the action—I mean that my mother was bringing up—was very severe. I mean there was difficulty at home, I agreed, but no one ever—

Mr. Weber: Mrs. Kuhrke, just answer the question.

The Court: Were they living together then?

The Witness: No, sir.

The Court: How long had they been separated?

The Witness: Well, I can't tell you any specific time, but they——

The Court: Well, about.

The Witness: In months—oh, I would say probably about three or four. I am not sure.

The Court: Go ahead.

Q. (By Mr. Riseley): Did your father discuss death to you that day? Did he say anything about death? [70] A. Yes; he did.

Q. Now, what did he say?

A. He felt that through all this—I mean the fact of the whole turmoil that he was going through——

Mr. Weber: May I ask that the witness be instructed to tell us what was said?

The Court: What was said? Relate what he said.

(Testimony of Wanda Woynicz Kuhrke.)

A. Well, he said to me that he felt that—I mean under the conditions that I am trying to bring out—were preying on his mind so that he felt that if he was dead, that it probably would solve the problem.

Q. (By Mr. Riseley): Did he say anything about his mind?

A. Yes. I believe he told me that the pressure—I mean of the whole situation—was so severe that he felt that he was going out of his mind. And then he just didn't know which way to turn.

Q. Did he mention the Bolsheviks to you that day at all? A. Yes.

Q. What did he say?

A. He pointed out that it seemed that the fact that we had lived here in the United States, that they were using communistic system of bringing up, say, false accusations and things of that sort?

Q. Did he mention his health to you that day, or had he in that month of September, 1942? [71]

Mr. Weber: Just a moment. I dislike to make the objection that the questions have been leading, but can't we have a question that will cover in general form the entire conversation that took place at this time, instead of having different typical subjects fed to the witness one after the other?

The Court: He has a right to ask the questions, and there is no way of seeing whether they are competent. Go ahead.

Mr. Riseley: Would you read the question to the witness, Mr. Reporter?

(Testimony of Wanda Woynicz Kuhrke.)

(Pending question read by the reporter.)

A. Yes; he had pointed that out, his physical endurance. He was wondering whether or not he would be unable to continue his work and whether or not he was going to have his mind under all the pressure that was on him from my mother.

Q. Did he say anything about sleeping?

A. Yes. He had a great deal of trouble sleeping at that time; the fact that he would probably go to bed and just toss and turn all night and not get a wink of sleep, and he would have to go to business the following day exhausted.

Q. Did you ever observe him to cry during that period in September, 1942, and August, 1942?

A. Well, yes; quite frequently, particularly since we discussed the case at hand.

Q. Did he ever mention his father to you at that time in that period? [72]

A. Yes. He mentioned the fact that his father had committed suicide and that if he would probably do the same, he felt that that would probably help to solve the problem which was at hand.

Q. Did he ever mention your brother in the service at that time? A. Yes; he did.

Q. What would he say?

A. Well, he was wondering about his whereabouts, the fact that he was going to be shipped overseas and into great dangers which were in front of him.

(Testimony of Wanda Woynicz Kuhrke.)

Q. Now, as you observed your father when you went to see him in August, 1942, would you describe to the judge how he appeared to you and what you saw?

A. Well, my father was what I would say was physically worn out from the mental strain that he was under. He was trying to conduct the business; he was trying to save his home; he was trying to salvage something out of the whole situation, which seemed to just crumble all up.

Mr. Weber: May I ask that the witness be instructed to answer the question as to how Mr. Woynicz looked to her in August of 1942?

The Court: Yes.

Mr. Weber: Instead of trying to summarize the many things that he was trying to do. [73]

The Court: You are asked a question: How he appeared to you.

A. Well, my father, as I still say, looked worn out. I mean a person, to have all this around him, there certainly is a definite change in their physical well-being.

The Court: Don't argue the question. Answer how he appeared to you.

A. He seemed to be worn out, as I said before.

The Court: Now, you said that three times.

The Witness: Yes.

Q. (By Mr. Riseley): Did you notice anything about his hands?

A. Yes. I think, due to the fact of the extreme

(Testimony of Wanda Woynicz Kuhrke.)

tension that was about him, he became very nervous and his hands shook.

Q. Did you notice his cheek?

A. Yes. There was a peculiar nerve reaction there which was under certain conditions, or probably talking, this nerve would twitch and it would twitch rather violently at times.

Q. Had you ever noticed that before this period of August and September, 1942?

A. No.

Q. Did your father ever mention people being killed in accidents to you?

A. Yes; he did.

Q. What did he say? [74]

A. Well, he often mentioned that there had been at least freak accidents or just accidents that have happened every day, and that people are being killed quite frequently, and under his depressed mind at that time he felt that he should be one of the victims, but he was not.

Q. Did he ever discuss Mr. Zimmerman with you?

A. Well, yes; he did. Mr. Zimmerman was my——

Mr. Weber: Just a moment. The question has been answered.

The Court: Proceed. Go ahead.

Q. (By Mr. Riseley): What did he say?

Mr. Weber: Objected to as irrelevant, also incompetent and not binding on the plaintiff.

(Testimony of Wanda Woynicz Kuhrke.)

Mr. Riseley: Offered solely as a declaration of the person whose incompetency is in question, to show declarations as to what he said, to either show his competency or his incompetency.

The Court: She may answer. Overruled. You may answer. Go ahead.

A. My father had told me about Mr. Zimmerman being his attorney, and at the time, he asked me to see him and see what I could do to help him out, and I agreed to go to see Mr. Zimmerman.

Q. (By Mr. Riseley): Is that all he ever said to you about Mr. Zimmerman? A. No. [75]

Q. What did he say?

A. He felt that Mr. Zimmerman did not seem to help him. I mean he added no solution to the problem that my father was facing.

Q. Did he say anything about witnesses or anything like that? Did he say anything about witnesses? A. Yes; he did.

Q. What did your father say to you?

A. My father told me that it seemed to be hopeless that he would have any witnesses in the case; of the fact that whenever he offered any particular person, say, as a witness, Mr. Zimmerman felt that he would not be the proper sort of witness to have, particularly saying employees in his firm. He felt that due to the fact that they were in his employ, that the witnesses would probably say what my father wished them to say due to the fact that they were paid a salary.

(Testimony of Wanda Woynicz Kuhrke.)

Q. Directing your attention to September 16, 1942, did you see your father on that day?

A. I did.

Q. And what was the occasion?

A. It was my twenty-second birthday.

Q. Did you talk to your father that day?

A. I did.

Q. And what was said?

A. Well, he asked me to come in to see him, and at which time he wished me a "Happy Birthday," which my mother did not; [76] and he at that time was taking me out to dinner for a small celebration.

Q. Do you recall anything said to you that day?

A. Yes. He said he was sorry that the party had to be away from home and that the proper place, of course, would be at home, but the way the situation was at hand at that time, it was impossible.

Q. Did he ever complain to you about forgetting things or not being able to think or anything of the sort?

A. Yes; quite often. The fact that in maintaining his business——

Q. What would he say? That is what we want. What would he say?

A. Well, he would say that he couldn't keep his mind on his work. I mean there was a great deal of responsibility there. There were men under his supervision and there were contracts that had to be

(Testimony of Wanda Woynicz Kuhrke.)

fulfilled, and at times he felt that—I mean his mind was just in a whirl.

Q. Did he ever talk to you about his brother in Poland? A. He did.

Q. At that time what did he say?

A. Well, my uncle at that time was shipped to Siberia.

Q. He told you this? A. Yes.

Q. Continue. [77]

A. And the stories he related to me would go back to some of the known truths of today, the horrors and conditions which existed there, and that seldom people ever survived the ordeals and that they would die, which my uncle did.

Q. Did he ever mention politics to you?

A. In what respect?

Q. The Bolsheviks, for instance.

A. Well, yes. He hated them.

Q. What would he say? Would he talk on it a short period, or how often did he talk about it?

A. Well, when he used to get into a discussion, he would bring out the points of the way of their code of living; that anyone who stood in their way, whether right or wrong, would be destroyed or be sent into exile, and they were given that long term of punishment which, most naturally, meant death.

Q. How frequently would be mention this?

A. Well, quite often, due to the fact that my uncle was there and that, I think, preyed on his mind a great deal.

(Testimony of Wanda Woynicz Kuhrke.)

Q. Did you observe him one day in Mr. Zimmerman's office, in September of 1942?

A. Yes; I was there.

Q. Would you tell how he acted on that day, what you saw him do or what he said?

A. Well, I went there to talk over the case with Mr. Zimmerman and get some of the few points that were on hand. [78] I mean some of the points that were brought out I objected to quite strongly and tried to influence my father.

Q. What did he say to you? What did you say to him, now, when you were trying to influence him, and what did he say to you? That is what I want.

A. I felt that the agreement was——

Mr. Weber: Is this what you said?

A. Yes. I felt that the agreement was too strong. It took everything; it demanded so much of my father and his entire family.

The Court: Go ahead, go ahead. Let us not waste time any longer.

The Witness: I am sorry, sir.

The Court: I want to get through with this case.

A. I mean the demands right down the line and the whole agreement, they left nothing for his family, nothing for him.

Q. (By Mr. Riseley): What did he say when you tried to tell him?

A. Well, he felt probably it was the best thing. He was not sure. I kept trying. I tried to tell

(Testimony of Wanda Woynicz Kuhrke.)

him of the serious consequences of signing such a thing.

Q. Did he mention Moscow trials at all at that time?

A. He did; the fact that he was being railroaded right down the line. He felt it was the same thing.

Q. Did he say anybody had told him it was to be a [79] Moscow trial? A. I don't recall.

Q. Did he ever talk to you about the trains?

A. In what respect? You mean his physical well-being?

Q. No; the trains, railroad trains.

A. Well, I think my father was thinking of committing suicide, as he has often said, to probably solve the problem.

Q. What did he say—not trying to reason why he said it, but just what did he say?

A. He said that he would like to have jumped in front of trains and probably killed himself.

Q. Did he ever mention his past demolitions experience to you?

A. Yes; he has often related some of the stories and facts that he was in the service under the Czarist Russia and that he was in the engineering corps, and that they went on these different maneuvers where they blew up bridges and built bridges and such.

Q. Would he say anything further about it?

A. Well, the fact that my father was so de-

(Testimony of Wanda Woynicz Kuhrke.)

pressed at all times that he felt that if, in some way he could destroy himself. I mean the fact blowing himself up or something, or killing himself in some way, maybe he could free himself of the problem.

Q. Did he ever say anything to you about refusing to take [80] your testimony?

A. Yes; he did. Mr. Zimmerman wanted my testimony in writing.

Q. That is what he said? A. Yes.

Q. Go ahead; tell me everything he said.

A. Mr. Zimmerman said that the testimony would be submitted in writing and that I would have to answer questions. I mean for my father's defense, of course, against my mother. And my father said under no circumstances would his children testify against their mother regardless of what the situation was between them. He at all times wanted to safeguard his children.

Q. Did he ever mention religious subjects to you or God to you at that time?

A. I believe so.

Q. What did he say?

A. Well, he pointed out that God probably was not just to him, and that maybe there was a God on this earth. He said if he had any justice, that he would probably take his life.

Q. Did he ever mention Camp Upton to you?

A. Yes.

Q. What did he say about Camp Upton?

A. The fact that my brother was stationed there

(Testimony of Wanda Woynicz Kuhrke.)

and [81] he was going to be shipped out, and that he wanted my mother to go there. Going back to the city where we had our bungalow camp, up on the road back, and the party at that time was broken up in two—those traveling in my father's car and those traveling in the car that belonged to Lucy and Helen——

Mr. Weber: I take it you are offering this, too, as indicating a lack of mental competence; is that right, counsel?

Mr. Riseley: Either to indicate a lack of or mental competence. I was asking what her father said to her about the Camp Upton incident, rather than what happened.

Mr. Weber: I take it you are inquiring——

The Court: Go ahead. You can argue the case after.

A. My father felt that my mother should come to see her son off. After all, he was an offspring of both parents, and in some way, a verbal agreement, she agreed that she probably would come there, but she did not. She continued on home to the Bronx.

Q. (By Mr. Riseley): Now, Mrs. Kuhrke, you were intimately acquainted with your father in the period of August and September of 1942, were you not? A. I was.

Q. Do you have an opinion as to his mental competency at that time?

A. Well, I wouldn't say that——

(Testimony of Wanda Woynicz Kuhrke.)

Q. Just do you have an opinion? [82]

A. Yes.

Q. What is your opinion?

A. My opinion of my father's mental state at that time was, I think, more or less a borderline case, where he would go around doing routine things and not being aware of the fact that things were about him, when he was torn between two ends. I mean the fact of maintaining a business and trying to salvage——

Mr. Weber: Just a moment. The question was: What is her opinion?

The Court: What is your opinion?

Q. (By Mr. Riseley): Was he incompetent or was he competent?

A. I don't think he was competent.

Mr. Riseley: No further questions. You may cross-examine.

Cross-Examination

By Mr. Weber:

Q. When did you think he became competent after this time, Mrs. Kuhrke?

A. I don't think he has fully recovered.

Q. And that condition has never changed, according to your opinion, is that right?

A. Well, I couldn't say that entirely. He was told by doctors to——

Q. No, Mrs. Kuhrke. My question is simply: In your [83] opinion, that state has never changed?

(Testimony of Wanda Woynicz Kuhrke.)

Mr. Riseley: I will object in this, that I think counsel should first lay the foundation as to whether or not she was able to observe him all the time over all the intervening years.

The Court: You have gone into it and gotten her opinion. He has a right to cross-examine.

Q. (By Mr. Weber): Let me ask you this: You saw your father practically several times a week in August of 1942? A. I did.

Q. How about September of 1942?

A. I believe I did.

Q. Two or three times a week?

A. Possibly.

Q. And October? A. Yes.

Q. And the rest of the months for the balance of that year? A. Yes.

Q. Did he go to work every day during those months? A. He did.

Q. And similarly in 1943? A. Yes.

Q. And in 1944? A. I believe so. [84]

A. And in 1945? A. Yes

Q. And in 1946? A. Yes.

Q. And throughout those years Mr. Woynicz remained president of the New York Thread Grinding Corporation? A. Yes.

Q. Were you ever present when Mr. Woynicz signed or negotiated any contracts with the government agencies for war products? A. No.

Q. Were you ever present at any time when Mr.

(Testimony of Wanda Woynicz Kuhrke.)

Woynicz was purchasing supplies for the New York Thread Grinding Corporation? A. No.

Q. Were you ever present when Mr. Woynicz signed checks on behalf of the New York Thread Grinding Corporation?

A. I might have been in the office at the time that he was in the process of doing the same.

Q. Upon how many such occasions were you present? A. I don't recall.

Q. During any of that period of time—I think I asked you that. Was Mr. Woynicz absent from his work for any period of time?

A. No; only during the time that he had to go for an [85] operation.

Q. During the time Mr. Woynicz was discussing with you the papers that had been served on him, he reported to you, from time to time, the records of his discussions with Mr. Zimmerman?

A. Yes.

Q. And on one occasion he suggested that you go and see Mr. Zimmerman? A. He did.

Q. Who was present at that conversation with Mr. Zimmerman which you attended?

A. Just Mr. Zimmerman and I.

Q. You never did meet Mr. Simon, did you?

A. No, sir.

Q. And the conversation to which you referred was the conversation in which you discussed, in the presence of your father, the desirability of signing this separation agreement?

(Testimony of Wanda Woynicz Kuhrke.)

A. I first spoke to Mr. Zimmerman by myself.

Q. Oh, you had a separate meeting with Mr. Zimmerman, did you? A. Yes.

Q. In other words, there were two meetings—one merely between yourself and Mr. Zimmerman, and the second one in which your father was present?

A. Well, my father was present at the conclusion of [86] the conversation the two of us had together.

Q. At what meeting was it that Mr. Zimmerman told you that, in his opinion, the testimony of employees would probably be valueless since they were on the payroll or salary of Mr. Woynicz? Was that the one that you attended alone?

A. That was the meeting that I believe my father was with me at the time, that one and only meeting I had with Mr. Zimmerman.

Q. And at what meeting was it that your father said that he felt it was the best thing to do?

A. The best thing to do what, to sign the contract?

Q. Sign the contract; was that the one that you attended? A. No, sir.

Q. And he told you that outside of the meeting with Mr. Zimmerman, is that right? A. Yes.

Q. Just the two of you were present?

A. Yes.

Q. By the way, did you ever see Mr. Woynicz sign any of these checks? A. I did.

Q. About how many did you observe?

(Testimony of Wanda Woynicz Kuhrke.)

A. Well, quite a few.

Q. Can you tell me approximately which ones you observed, from the standpoint of time? [87]

A. Well, I believe all of those, or possibly a great number of them from the end of 1942 up to the time that he went to Florida.

Q. Were you living together? A. Yes, sir.

Q. And you saw him sign those checks more or less regularly, is that right? A. That is right.

Q. And throughout the entire period from September, 1946, to the time Mr. Woynicz went to Florida, he made his home with you?

A. Right.

Q. During those years did Mr. Woynicz read the papers? A. Yes.

Q. Newspapers? A. Yes.

Q. And did he discuss with you the topics of the day? A. Quite frequently.

Q. Discuss the war situation? A. Yes.

Q. And the progress of military events?

A. Yes.

Q. His hatred for the Russian regime?

A. Right.

Q. Did he correspond with your brother on occasion? [88] A. Quite frequently.

Q. And he wrote letters, himself, did he?

A. Yes, sir.

Q. In the English language?

A. I believe so.

(Testimony of Wanda Woynicz Kuhrke.)

Q. About how many times would you say you visited the shop in the year 1942, Mrs. Kuhrke?

A. I have no idea.

Q. Upwards of a dozen?

A. Probably more.

Q. And in the course of your visits did you observe Mr. Woynicz giving instructions to the employees under his supervision?

A. Well, not that much. I used to drop in probably after work or before work.

Q. And you had an opportunity to observe him giving instructions to personnel under his supervision?

A. I believe most of his supervision was probably done outside of the office, with a few exceptions, of course.

Q. And on occasion his duties would take him in contact with office personnel as well?

A. Right.

Q. About how many checks would you say you saw your father sign, referring now to the checks comprising——

The Clerk: Exhibit 10. [89]

Q. (By Mr. Weber): Plaintiff's Exhibit 10?

A. Well, I believe there were something like four a month.

Q. And you had an opportunity to observe his signature on those checks, is that right?

A. I did.

Q. I show you at random check dated October 5,

(Testimony of Wanda Woynicz Kuhrke.)

1942, and ask you whether or not at the time that check was signed, in your opinion, your father was competent or incompetent?

A. You mean whether he was competent to write a check or otherwise?

Q. Was he competent to write a check?

A. Yes; because, after all, this was part of an agreement which he had to fulfill.

Q. And he indicated to you that at the time he wrote the check he knew he had to sign such a check, is that right? A. Yes.

Q. I show you another check dated October 12, 1942, and ask you whether or not, in your opinion, at the time your father signed that check he was competent or incompetent?

A. I would say he was competent enough to write the checks, and I say it is his duty because of the fact he had to fulfill his part of the agreement.

Q. And he indicated to you that he knew that?

A. Yes. [90]

Q. I show you another check dated September 6, 1943, and ask you whether or not at the time your father signed that check, in your opinion, whether he was competent or incompetent?

A. Again, I say he was competent enough to sign the check.

Q. And to know what it was for? A. Yes.

Q. And that it was executed pursuant to the agreement which he signed? A. Yes.

(Testimony of Wanda Woynicz Kuhrke.)

Mr. Weber: No further questions, your Honor.

The Court: You are excused.

Mr. Riseley: If it please the court, I can have an expert here in 10 minutes.

The Court: No. We are about ready to adjourn. You ought to have had him here before adjournment, in court hours. We are about ready to adjourn. Have him here tomorrow.

Mr. Riseley: Yes, your Honor.

The Court: We will recess until tomorrow morning at 10:00 o'clock.

(Whereupon, a recess was taken until the following day, Wednesday, March 8, 1950, at 10:00 o'clock a.m.) [91]

Wednesday, March 8, 1950

The Court: Proceed.

Mr. Riseley: Dr. Walter Z. Baro.

DR. WALTER Z. BARO

called as a witness by the defendant, being first sworn, was examined and testified as follows:

The Clerk: And your full name?

The Witness: Walter Z. Baro, B-a-r-o.

Direct Examination

By Mr. Riseley:

Q. What is your profession?

(Testimony of Dr. Walter Z. Baro.)

A. I am a physician and surgeon.

Q. Where do you have your offices?

A. At 417 South Hill Street.

Q. Would you state your qualifications?

A. I graduated in 1936 from the Italian University Medical School at Bologna in Italy. I had a surgical internship in Italy Orthopedic Hospital, in Italy. I also had post-graduate work in psychiatry at the University of Florence, Italy. In this country I had a rotating internship at the Naval Center in Jersey City, New Jersey. I was there also in charge of the psychopathic admitting ward. I had three residencies: One in Brooklyn, New York, one in Ada, Oklahoma, and one in Lancaster, South Carolina. [93]

I joined the service in September of '42 and was released on account of a disability in '44, in March of '44, and spent from 1944 to 1946 at the mental hospital, now called the Brentwood Hospital of the Veterans Administration at West Los Angeles.

I have been in practice since June of 1946, being duly licensed in the State of California, limiting my practice to mental and nervous diseases.

From July 1, '46 to July 1 of '49 I was a psychiatrist on the Commitment Board of the Juvenile Hall, under the supervision of the Superior Court of the County of Los Angeles. I am a consultant of the Juvenile Court.

I was an examiner for the Industrial Accident Commission of the State of California. I was one

(Testimony of Dr. Walter Z. Baro.)

of the two examiners for the Psychopathic Court Clerk of the Superior Court of the County of Los Angeles.

I think that is, in short, my qualifications.

Q. Do you know the defendant, Leonard Woynicz? A. I do.

Q. Have you examined him? A. I have.

Q. What did you do?

A. The first time I saw the defendant was on May 11th, 1949. At that time I examined him and issued an affidavit. I re-examined him again on March 3, 1950. At that time I [94] obtained the following history:—

Mr. Weber: Objected to as irrelevant, incompetent and immaterial. This witness is being offered as an expert, I submit, your Honor, and the way to obtain the opinion of this witness is to propound a hypothetical question.

The Court: The court cannot direct how he is to form his questions.

Mr. Weber: But I submit the history, in entirety, given by the defendant is irrelevant, incompetent and immaterial, not binding on the plaintiff.

The Court: I do not know whether he is submitting it for that purpose or other purpose. He may be inquiring from facts in his own mind that he knows. He has a right to inquire. Overruled.

A. I obtained a history from the defendant that he went to school about five years in Russia; also, his schooling was done in a trade school. He knows

(Testimony of Dr. Walter Z. Baro.)

how to write and to read a little bit in the Polish language and the Russian language and the Lithuanian language, and also in the English language.

He served in the Russian Army for four and one-half years, from 1906 to 1910, and had the rank of top sergeant. It is probably equivalent to our first sergeant.

He came to this country in 1911. He brought his wife, to whom he was not married at that time, to this country in 1916. He told me that his wife was a school mate of his sister. [95] He married on December 26, 1916, and had four children. The first child died, the second was a boy, the third was a girl, and the fourth child was a boy.

He noticed that about 1922 his wife became quite argumentative. He recites an incident that while they were eating dinner company was there and his wife started eating before the rest of the people, and he reprimanded her and his wife got up from the table and, according to his statement, for two and one-half years she did not talk to him at all; the conversation between the two was through a third person, the children, or through slips of paper.

Then she left him for about six weeks and she wrote home a letter. In this letter she stated that he had beaten her. And then suddenly, unexpectedly one day she walked into the house, and he describes this entrance rather vividly, inasmuch as the children were rather frightened and ran over to him. His wife demonstrated some blue marks on the

(Testimony of Dr. Walter Z. Baro.)

right side of her body and she told him that a train had hit her.

However, in view of the fact that the children were small the defendant told me that he reconciled with the wife and on her insistence they sold the farm and he bought a house.

Then in 1925, during her last pregnancy, his wife attempted suicide by taking corrosive poison. But due to the help of doctors she was saved and she delivered the last baby boy. However, he noticed that for six weeks she would not touch [96] that child at all.

Then at that time he worked in New York and they lived in Lakewood, New Jersey. Since he had to travel from New York to Lakewood and the only way he could travel was over the week-end, finally the family moved to New York in 1932.

The relationship with his wife was rather casual and in 1942 she served him with divorce papers. At that time the defendant was, as he states, working rather hard. He got up at 4:00 o'clock in the morning and worked until 11:00 o'clock at night.

Her lawyer wrote to him and he called the attorney up, and at first, as he states, he thought the whole thing was a joke. And then he finally was subpoenaed and through some friends he went to an attorney by the name of Zimmerman. He states that one of the accusations in the divorce suit was that he spent the time during the day with women, and there was especially one girl with whom he sup-

(Testimony of Dr. Walter Z. Baro.)

posedly spent time. And he told me that one of his boys was in love with that particular girl.

Then during the divorce procedures and also after the divorce procedures he was under the care of doctors and at their request he went to Florida.

Now, at the time of the divorce suit he had all kinds of ideas, as, for instance, he asked his attorney: "Is this a Moscow trial?" And supposedly the attorney said: "It is the [97] same thing." And the reason he asked that was because one of his brothers was murdered by the Bolsheviks.

The Court: Are you relating now what he told you?

The Witness: That is right. That is exactly what he told me, verbatim.

The Court: Have you got notes of it taken at the time?

The Witness: That is right. That is right; I have notes right here, your Honor.

The Court: All right.

A. He told me that one of his brothers was murdered by the Bolsheviks, and he had heard and also seen about the Moscow trials in a movie, and also newspapers. And he said, verbatim, "I was losing ground and faith." And he felt: "All right, if this is supposed to be like a Moscow trial, I will sign everything which is handed to me."

Then at around the same time he had to have surgery and, as every doctor, the doctor who operated on him told him there is always a chance that

(Testimony of Dr. Walter Z. Baro.)

one could die. And while he was given the anesthetic—and this, again, is his own words—he said, “God, let me not see the light again.” That is the last wish which he had before he underwent surgery.

After leaving New York he went to Florida and he stayed down in Florida until about 1947, and was under constant doctor’s care there, and he improved and he got better and finally came to California. [98]

Q. Now, at the present time, especially on——

Mr. Weber: Is this also part of the history, your Honor?

The Court: I asked him and he said, “Yes.” He said he told him these things. He has got the history. He stated that he is relating the history that this man related to him as a doctor.

A. On March 3rd I obtained a further history about his present condition, and he was rather depressed at that time. He started to cry during the examination and he said, verbatim, “I wish God would kill me. My father committed suicide. I don’t think he did the wrong thing.” And that was a short history which I obtained, your Honor.

The Court: Go ahead. Don’t take so long to ask these questions.

Q. (By Mr. Riseley): Dr. Baro, suppose that a man was born in 1884; that in March, 1940 he developed an acute appendicitis, and that in June, 1941, he had a recurrence, was operated on for an

(Testimony of Dr. Walter Z. Baro.)

acute appendix; that in March, 1942, he had a hernia; that for several months prior to August, 1942, he had been under a doctor's care, although working 12 to 16 hours a day; that during this time he was worried a great deal about a brother in Poland who was killed by the Bolsheviks; that he was also worried about a son who was in the service, and had marital troubles with his wife; that in August, 1942 his wife sued him for separate maintenance and made serious charges of [99] misconduct against him; that these charges were a great shock to him and he considered them unfounded; that he had severe headaches; that he could not sleep and was taking sedatives under doctors' prescriptions; that he was confused; that he had thoughts of suicide and told his daughter that his father had committed suicide and he thought he had done the right thing; that he told his daughter that he wished somebody would come and kill him so that he would not have to commit suicide; that he was afraid he was going insane; that he was very depressed and would lie quite motionless for hours at a time without sleeping; that he frequently had crying spells; that he had muscular trembling, his hands shook and the nerves in his cheek would vibrate involuntarily; that he became forgetful; that he was in charge of heat-treating and purchasing in a machine tool business and often would lose parts given to him and forget to place orders, and assume that all of the above was his condition during August and September, 1942.

(Testimony of Dr. Walter Z. Baro.)

Now, Doctor, assuming the above facts, do you have an opinion as to the man's mental condition during the month of September, 1942?

Mr. Weber: I would like to object to that hypothetical question upon the ground that it is not based upon a full summary of the evidence introduced here, and that the facts assumed in the hypothetical question represents but a fraction of the evidence that was introduced in this trial and, in our [100] view, the testimony of an expert cannot be based on a fraction of the evidence, but must be based upon a fair summary of the whole thereof.

The Court: Overruled. Go ahead, go ahead.

A. I have an opinion.

Q. (By Mr. Riseley): What is your opinion, Doctor?

A. My opinion is that the man, due to external influences, developed severe nervousness, and finally developed what we call in mental and nervous diseases a reactive depression. That means a depression and reacting due to facts which have influenced him in that particular time. And a reactive depressive patient is a patient who very frequently will commit suicide. He not only talks about it, but has lost at that particular time the facts of reality. These patients do not live in reality. And, in my opinion, that was his mental condition at the time in 1942.

Q. Assume that the man's condition remained the same between September, 1942, and the latter part

(Testimony of Dr. Walter Z. Baro.)

of 1947; that he was under doctors' care during all this time and was finally advised to go to Florida, and he went to Florida in 1947. Do you have an opinion as to his mental condition between September, 1942, and the latter part of 1947?

A. I have.

Mr. Weber: We make the same objection to this.

The Court: The same ruling, overruled. [101]

A. I have.

Q. (By Mr. Riseley): What is your opinion?

A. My opinion is that he probably slightly improved during that time, but I do not think that he recovered.

Mr. Riseley: Cross-examine.

Cross-Examination

By Mr. Weber:

Q. Dr. Baro, in September of 1942, in your opinion, do you think that Mr. Woynicz had the mental competence to read a newspaper and understand it?

A. I don't think so.

Q. And your opinion is that at that time he lacked mental competency to discuss military events then in progress with his family, for example?

A. I don't think so, either.

Q. In your opinion, Mr. Woynicz in September of 1942 lacked the mental competence to transact business?

A. I think it depends entirely what type of business.

(Testimony of Dr. Walter Z. Baro.)

Q. Well, would you say that Mr. Woynicz had the mental capacity to go to his employment every day and exercise some of the duties of his position as president of the New York Thread Grinding Corporation?

A. I think he could have partly. It is surprising, sometimes, what mental patients can do.

Q. Yes. And sometimes, although they have some mental [102] ailment, they have perfect competence, for example, to sign a contract with the government?

A. I think, if that is something which he used to do regularly, yes.

Q. For example, a person suffering what you have described as reactive depression, oftentimes is quite competent to sign a contract, even though they experience this depressive state that you refer to?

A. I think, counsel, I answered before, certain contracts. It depends on the type of contract. If he used to see them frequently and sign certain types of contracts like you relate, government contracts, it becomes automatic. But if there is something which is new, which is especially a disturbing factor, I do not think he is competent to do it.

Q. At the time that Mr. Woynicz gave you this history did he make known to you the fact that he had attended his duties uninterruptedly from August, 1942, to December, 1946?

A. His duties, uninterruptedly, in New York do you mean?

(Testimony of Dr. Walter Z. Baro.)

Mr. Weber: Would you read that question back, please?

(Question read by the reporter.)

The Witness: Would you clarify this question by what type of duties you are talking about?

Q. (By Mr. Weber): Did he tell you that he went to his business every day during those five years? [103]

A. First, it was four years, and he told me that. He told me that he was working; that is right.

Q. Wouldn't you consider the fact that he went to his employment practically every day during that interval as having some bearing on whether or not he had a mental competence at that time?

A. It would surprise you, counsel, how many people go to their business and are not mentally competent.

Q. Well, would you say that it has a bearing on the question as to whether or not Mr. Woynicz was competent at that time?

A. In my assumption, based upon my experience, it has no bearing whatsoever.

Q. Would you say that the continuance of his duties in charge of the purchasing of materials for New York Thread Grinding Corporation at that time has a bearing, in your opinion, as to whether he was competent or incompetent at that time?

A. I think I answered you that question before. This is automatic. This he has been doing for some years. It is always the same.

(Testimony of Dr. Walter Z. Baro.)

Q. Doctor, does it have any bearing, in your opinion, on the issue as to whether he was competent or not? It is a relevant circumstance—let us put it that way?

A. In my opinion, it has no relevance whatsoever. [104]

Q. Would you say the same with respect to the signing of checks by Mr. Woynicz in connection with his employment?

A. I would say identically the same thing; that it would not have any bearing as far as my situation is concerned.

Q. In other words, it makes no difference, in your opinion, concerning a man's competence or incompetence as to whether or not he issued and knew the purpose of checks in the regular discharge of his duties? A. That is correct.

Q. It has no bearing whatsoever?

A. It has no bearing in my opinion.

Q. Even though he comprehended the purpose and reason for a check or a particular series of checks?

A. You have to prove it to me that he did comprehend——

The Court: Do not argue with the attorney.

A. I have to answer the same way. In my opinion, it does not have any bearing.

Q. (By Mr. Weber): In other words, if he drew a check and knew exactly what the check was for, in your opinion, it has no bearing as to whether

(Testimony of Dr. Walter Z. Baro.)

he was competent or incompetent at the time so far as the transaction is concerned?

A. It has no bearing. If I can be permitted, your Honor, to qualify my answer?

The Court: Go ahead.

A. We know, doing this type of work on incompetency or [105] competency, that a lot of people are declared incompetent but they know exactly the value of a check. There are a lot of people who are incompetent and they know the value of money, and still there are certain actions that will prove to us that they are incompetent.

Q. (By Mr. Weber): Doctor, in your opinion, was Mr. Woynicz competent to understand that his wife was suing him for separation?

A. I think he understood that.

Q. And, in your opinion, was he competent to understand in August of 1942 that his wife was asking for temporary alimony in that action?

A. That is a very difficult question for me to answer. I think it was explained to him by his attorney. I am not so sure if he understood the definite, ultimate results.

Q. In your opinion, does the fact that the defendant, Mr. Woynicz, understood that he was being sued for temporary alimony by his wife have any bearing whatsoever upon his competence or incompetency at that time?

A. I think it has a lot of bearing on his incompetency.

(Testimony of Dr. Walter Z. Baro.)

Q. And I take it that by that statement, you mean that his knowledge that he was being sued for temporary alimony as coincident to the separation action does have some bearing, but an adverse bearing on his competency, is that right?

A. No; I don't think it had an average bearing. I think [106] it had a very severe bearing. As a matter of fact it produced, in my opinion, mental illness.

Q. Do you think Mr. Woynicz understood at that time that his wife was asking for counsel fees?

A. I don't think he understood it, because he left everything up to his attorney.

Q. In other words, it is your opinion, I take it, that he did not know that counsel fees were being asked of him in that action?

A. I can't answer you that question directly because, unfortunately, I did not ask him. But, as he explained it to me——

Q. Well, we are interested in your opinion at this moment, Doctor. In your opinion, did Mr. Woynicz understand that his wife was asking for counsel fees in that separation action?

A. I don't think he understood it, because, as he told me, he left everything up to his attorney.

Q. And you have the same opinion that he did not understand that his wife was asking for temporary alimony in that action?

A. I told you that he understood that, but I do not think he understood the ultimate result and the ultimate effects.

(Testimony of Dr. Walter Z. Baro.)

Q. Doctor, would the nature and extent of the conferences [107] and negotiations that took place between Mr. Woynicz and his attorney, Mr. Zimmerman, have a bearing upon your opinion as to whether he was competent or incompetent at that time.

A. Can't you qualify that question? "Nature," what do you mean by nature of conferences?

Q. Well, would the subjects discussed between Mr. Woynicz and Mr. Zimmerman have a bearing on your opinion as to whether Mr. Woynicz was competent or incompetent at that time?

A. I don't think so.

Q. In other words, no matter what they discussed, it is your opinion that it would not have any bearing? A. That is correct.

Q. And even though Mr. Woynicz knew perfectly well that he was signing a separation agreement, in your opinion, he did not have the competency to execute that separation agreement?

A. Exactly.

Q. Even had he discussed each of the clauses with Mr. Zimmerman?

A. That is correct.

Q. And I take it that if, for example, after reading this contract, Mr. Woynicz insisted on certain changes being made in it or in the draft of it, in your opinion, that would [108] have no bearing whatsoever whether he was competent or incompetent to the extent that he was signing a separation agreement?

(Testimony of Dr. Walter Z. Baro.)

A. I would like to qualify my answer this way, counselor: I think that he did not realize and comprehend the ultimate results, and that is my basis for believing that he was incompetent, even if he at the time asked for changes, even if at the time, let us say, he comprehended what was told to him.

Q. Doctor, if upon reading a part of this separation agreement Mr. Woynicz said to Mr. Zimmerman: "I insist that you strike out my wife's request for visitation privileges so far as Robert is concerned," in your opinion would that have any bearing upon your opinion as to whether Mr. Woynicz understood what he was signing when he signed this separation agreement?

A. It would have a bearing to increase my belief of incompetency, because the man had such a hatred at that particular time against his wife.

Q. And if Mr. Woynicz insisted to Mr. Zimmerman, after reading a draft of this contract, that he wanted more time to remove from the premises then jointly occupied by the parties, would that have any bearing at all upon your opinion as to whether or not Mr. Woynicz knew he was signing a separation agreement when he signed this document, referring [109] to Plaintiff's Exhibit 1?

A. I think I said to you, counselor, that he knew that he was signing something, but my opinion is that he did not know the ultimate results.

Q. When you say he knew he was signing some-

(Testimony of Dr. Walter Z. Baro.)

thing, you mean by that, I take it, that he knew he was signing a separation agreement?

A. He knew he signed something which his attorney handed to him.

Q. Would you say that he knew that it was a separation agreement?

A. Possibly that it was a separation agreement; yes.

Q. Well, aren't you sure that he knew that, Doctor?

A. It was explained to him by his attorney.

Q. That it was a separation agreement?

A. That is right.

Q. And, in your opinion, he understood what that meant?

A. No; I didn't say that. In my opinion, he did not understand the ultimate results of the signing of this document.

Q. Doctor, I am referring now to Exhibit 1. Would the fact that Mr. Woynicz told Mr. Zimmerman to eliminate the provision with respect to visitation privileges on the part of the wife toward the son, Robert, have any bearing upon your opinion as to whether he knew this was a separation agreement? [110]

Mr. Riseley: I object to the question. I believe it has been asked and answered, your Honor.

The Court: Overruled.

A. I mean I have to answer this way: He knew

(Testimony of Dr. Walter Z. Baro.)

that there was a separation agreement, but he did not know the ultimate result in signing.

Q. (By Mr. Weber): And, in your opinion, he knew, did he not, that the separation agreement involved matters of custody of the children?

A. Certainly.

Q. And he knew it involved matters of alimony?

A. That is right.

Q. And he knew it involved matters of removing from the premises at 2929 Wellman Avenue?

A. That is correct.

Q. And he knew it involved matters of removing tools from the house, under this separation agreement?

A. That is right.

Q. I show you check marked Plaintiff's Exhibit 6, dated September 23, 1942, in the sum of \$350, payable to Jack Klaw and ask you, Doctor, whether or not the fact that Mr. Woynicz knew that was a check for counsel fees, payable to his wife's attorneys, has a bearing on your opinion as to whether or not at that time he knew what he was doing when he signed that [111] check?

A. I have to answer in the same way, counsel. He probably knew that he had to sign this check. It probably was handed to him by his attorney. But it does not have any bearing upon me. It does not have any bearing upon my opinion that I feel that the man was not competent, did not understand the procedure.

Q. Doctor, I did not ask you that quite. My

(Testimony of Dr. Walter Z. Baro.)

question is: Does the fact that Mr. Woynicz, as testified here, knew that the purpose of that check was the payment of \$350 which the contract required him to pay to Mr. Klaw—does the fact that he knew that have a bearing upon your opinion as an expert that at the time he signed that check he knew the purpose of the check?

A. It has no bearing on my opinion.

Q. And, in your opinion, it is a matter of no consequence whatever whether Mr. Woynicz comprehended and understood what that check was for, and that it was issued under the contract?

A. It has no consequence whatsoever.

Q. And it has no bearing at all, in your opinion?

A. No bearing at all on my opinion.

Q. I show you a check dated September 23, 1942, marked Plaintiff's Exhibit 7, check in the sum of \$150, and I ask you, Doctor, whether in your opinion as an expert the fact that [112] Mr. Woynicz knew at the time he issued that check that it represented three weekly installments of alimony at the rate of \$50.00 a week, from August 23, 1942, to September 23, 1942, and ask you whether the fact that Mr. Woynicz knew that the purpose of the check was to cover those three weekly installments from the date mentioned in the agreement, Plaintiff's Exhibit 1, to September 23, 1942, whether that has a bearing on your opinion as to whether or not at the time that check was issued Mr. Woynicz understood what the check was for?

(Testimony of Dr. Walter Z. Baro.)

A. It has no bearing on my opinion, even if he understood what it was for. And if I may be permitted, I would like to qualify my answer because, unfortunately, we cannot in psychiatry just answer yes or no.

Q. Doctor, the question is simply this: Does it have a bearing on your opinion as to whether or not he knew what the check was for?

A. It has no bearing on my opinion.

Q. Doctor, you recognize, of course, that persons suffering from reactive depression oftentimes continue to transact their regular business; isn't that so?

A. I think I stated that in the direct examination.

Q. And although a person is under what you have called a reactive depression, oftentimes they have complete competence to understand some types of transactions; isn't that so? [113]

A. Sometimes, which I explained before, which are automatic things which have been done regularly and which are told to them to do.

Q. Now I show you a few random checks, Dr. Baro. I show you a check dated September 6, 1943, issued by Mr. Woynicz to his wife, and ask you whether or not, in your opinion, Mr. Woynicz was competent to understand the purpose of that check?

A. I feel that he was competent to understand what he was doing.

Q. I show you a check dated October 12, 1942,

(Testimony of Dr. Walter Z. Baro.)

the next in order, and ask you the same question?

A. That is the same answer.

Q. I show you another check, dated October 5, 1942, and ask you the same question?

A. The same answer.

Mr. Weber: That is all.

The Court: Anything further with this witness? Are you through?

Mr. Weber: No further questions.

Redirect Examination

By Mr. Riseley:

Q. Do you have any qualifications you wish to make of any of the answers you have given to Mr. Weber, Dr. Baro?

A. I would like to, if I am permitted. [114]

The Court: Well, go ahead, go ahead.

A. The situation with a mental patient is such, your Honor, that I happen to have, very often, patients sent to me who are mentally ill, but still they comprehend very well the value of money because it is their own money. There is one particular instance where a woman argued with me for about an hour about the fee of the examination. And I do not feel that that has any bearing on competency or incompetency. That is my qualification which I would like to make.

Mr. Riseley: No other questions.

Mr. Weber: No questions.

The Court: You are excused.

Mr. Riseley: The defendant rests, your Honor.

The Court: Any rebuttal?

Mr. Weber: There are some depositions here of Mr. Zimmerman and Mr. Simon, and while I do not believe they—let me put it this way—in view of the fact that the conduct of the two attorneys in New York has been drawn into question, I would like to complete the record by offering their depositions.

The Court: In rebuttal of their evidence?

Mr. Weber: Yes.

The Court: You may do so.

Mr. Weber: I stated two; I meant three attorneys, Messrs. Klaw, Simon, and Zimmerman. [115]

Mr. Riseley: Your Honor, in qualification of his two depositions I would like permission to introduce into evidence——

The Court: He is offering his case now. Let us do this in some regular order.

Mr. Weber: I offer into evidence the deposition of J. Charles Zimmerman taken on November 18, 1949, pursuant to stipulation of counsel for both sides.

The Court: Admitted.

Mr. Weber: Does the court desire that I read it?

The Court: You can tell me what is in it, can't you?

Mr. Weber: Yes; I can summarize it if the court desires.

The Court: Counsel agree on it, that you may read a summary. If he does not, I shall have to go into it.

Mr. Weber: I can state parenthetically that the deposition of Mr. Zimmerman indicates, in substance, that there were protracted meetings with Mr. Woynicz; the contract was discussed in detail; a number of objections were made by Mr. Woynicz, including those mentioned by the witness, namely, the visitation privilege was stricken out on behalf of Mr. Woynicz.

Mr. Woynicz also objected to the provision with respect to the deadline for the removal from the premises.

Mr. Woynicz, after reading a draft of the contract, also insisted on the insertion of a clause in the contract permitting Robert to remove certain tools. [116]

In addition to that, the witness refers to other objections made by Mr. Woynicz. The witness also details—not “details”—there is some testimony concerning the discussions had with Mr. Woynicz with respect to his earnings. It was pointed out to him that the war time earnings which were then being earned by Mr. Woynicz had a bearing upon the issues before a court in fixing alimony. Those matters were pointed out to him.

There is a complete refutation of the testimony of Moscow trials or any other acts of misconduct or alleged misconduct which Mr. Woynicz places at the door of Mr. Zimmerman. And, in short, this is a rebuttal of the testimony of Mr. Woynicz concerning acts which transpired in the office of Mr.

Zimmerman, and also confirms the testimony of Mr. Woynicz so far as the completeness of the discussion is concerned and so far as the terms of the contract are concerned, and that Mr. Woynicz knew the contents of the contract and assented to it.

The Court: Do you understand that? Is that the contents of that deposition, in general?

Mr. Riseley: Well, that is in general, your Honor. But as to all three of the depositions——

The Court: Let us take up one at a time now. Open this deposition so we can see what is in it. Do you agree with him that that is a statement of that deposition?

Mr. Riseley: In general, as to the contents of it; yes. [117]

The Court: All right; it will be admitted. Now, what next?

The Clerk: Your Honor, do I understand that the deposition of J. Charles Zimmerman is admitted into evidence?

The Court: It is admitted.

The Clerk: That will be Plaintiff's Exhibit No. 11.

PLAINTIFF'S EXHIBIT No. 11

(Endorsed: Filed Feb. 2, 1950)

[Deposition of J. Charles Zimmerman taken Nov. 18, 1949. See page 223 to 249 of this printed record.]

The Court: File it then. What is the next one?

Mr. Weber: The deposition of the witness Joseph L. Simon discloses, in substance, that Mr. Simon, who was then the law partner of Mr. Zimmerman, was present at one or two of the meetings which took place in that office; that he heard the discussion of the contract; that Mr. Woynicz knew what was going on and knew that the parties were negotiating a settlement agreement which would determine his obligations to his wife.

He testifies further that he was present at the time Mr. Woynicz signed it and that he took Mr. Woynicz's signature, and that at the time the contract was signed Mr. Woynicz was under no restraint or disability whatsoever; that he appeared to know what was contained in the contract and knew what it was all about.

Mr. Riseley: With the qualification that the deposition of Mr. Simon conflicts in very material respects with the one of Mr. Zimmerman——

The Court: Well, let us find out. What does that deposition [118] disclose? That is what we are seeking now. You can argue conflicts when the time comes, if there are any. Does it disclose what he stated?

Mr. Riseley: I am not admitting that it is true, but I will say in general——

The Court: I know that. I understand that.

Mr. Riseley: Generally, there is testimony to that effect in the deposition.

The Court: I am asking you about this deposition. Can you understand me? I am asking you does the deposition disclose what he states this witness states? That is all we have now.

Mr. Riseley: Yes.

The Court: That is admitted, then.

The Clerk: That is Plaintiff's Exhibit No. 12 into evidence, the deposition of Mr. Simon.

PLAINTIFF'S EXHIBIT No. 12

(Endorsed: Filed Feb. 2, 1950)

[Deposition of Joseph L. Simon taken on behalf of the plaintiff Nov. 17, 1949. See pages 250 to 266 of this printed record.]

Mr. Weber: I offer into evidence the deposition of Jack Klaw, similarly taken on November 17, 1949.

The deposition of Mr. Klaw is to the following effect: He was the attorney for Mrs. Woynicz in the separation action, and he testifies that there were protracted negotiations covering many, many weeks between himself and Mr. Zimmerman. During that time Mr. Woynicz made a number of counter propositions. The matter of alimony was fought back and forth. It was the subject of considerable debate. [119]

He testifies further, in corroboration of Mr. Zimmerman, that the negotiations were in all respects proper and free of any restraint; and it also discloses the fact that Mr. Woynicz evidenced familiarity with what was going on, and that in the contract he made a number of objections to specific clauses.

The Court: What do you say to that, about his statement?

Mr. Riseley: Well, that is the substance of it.

The Court: It will be admitted.

The Clerk: That is Plaintiff's Exhibit No. 13, the deposition of Jack Klaw, into evidence.

PLAINTIFF'S EXHIBIT No. 13

(Endorsed: Filed Feb. 2, 1950)

[Deposition of Jack Klaw taken on behalf of the plaintiff, Nov. 17, 1949. See pages 267 to 280 of this printed record.]

The Court: Any further rebuttal?

Mr. Weber: Just one more question of Mr. Woynicz. Would you take the stand on one point? No further rebuttal. That is all.

The Court: No further. He said he does not want it. Anything further from you?

Mr. Riseley: By way of impeachment of one of the depositions, your Honor, a letter that I would like to introduce.

The Court: Submit it to counsel.

Mr. Weber: No objection.

The Court: It will be admitted. What does that show? Tell me what is in that letter.

Mr. Riseley: This is a letter from Attorney Zimmerman to Leonard Woynicz and admits that in the course—— [120]

Mr. Weber: May I suggest the letter be read? It is not too long, your Honor.

The Court: You may read it. Go ahead.

Mr. Riseley: (Reading as follows.)

DEFENDANT'S EXHIBIT A

“Law Offices
Zimmerman and Simon
1101 National City Bank Building,
17 East 42nd Street,
New York.

“December 9, 1942

“Mr. Leonard Woynicz,
“c/o N. Y. Thread Grinding Corp.,
“237 Lafayette Street,
“New York, N. Y.

“Dear Mr. Woynicz:

“Your letter dated December 4th in which you state that my bill of December 1st is an additional bill and that it does not make sense, came to me as a great surprise.

“In the course of your trying work it is possible for events to escape your memory. I will, therefore, recall to you what happened while you sat at my desk in my office at the time I delivered to you the signed papers last September. I had explained to you that I felt that the services I had rendered [121] entitled me to a payment far in excess of the sum of \$500.00. At the time we agreed that \$500.00 was the amount that you would pay and I would accept. Do you not recall that you took from your pocket your bank book and showed me that because of the heavy payments you were called upon to make at that time that your balance was not very large? Do you not recall that you told me that you were purchasing a home for your children in Long Island and that you would be called upon to make a substantial payment for that purpose and that you suggested that you would give me \$400.00 at the time and the balance of \$100.00 a little later when you had replenished your bank account? I freely agreed with you and did not disturb you until November. At that time I wrote you asking you to send me the balance and when I did not get a reply to my letter of November 17 when I wrote you about the ring and the Christmas Tree ornament, I waited until the end of the month and then sent my bill in the regular course on December 1st. Does this not refresh your memory as to what happened at my office when you promised to send me the remaining \$100.00 at a later date?

“I remember, Mr. Woynicz, how often you stated

to me that money is not everything and that once an agreement is made a man should live up to it. I also [122] remember that I told you at the very start that I would never quarrel with you about fees. If this letter brings back to your memory something which you have overlooked, I am sure that I may expect your check by return mail.

“Cordially yours,

“/s/ J. CHAS. ZIMMERMAN.”

The Court: That is admitted. Go ahead.

The Clerk: Defendant's Exhibit A in evidence.

[Defendant's Exhibit A—See foregoing letter read by Mr. Riseley.]

Mr. Riseley: Nothing further, your Honor.

The Court: Both sides rest?

Mr. Weber: Yes.

The Court: You may proceed with the argument, if you want to argue.

Mr. Weber: May it please the court, I propose to make this a very brief argument.

The Court: Very well, go ahead.

Mr. Weber: Does the court desire argument at all?

The Court: If you want to argue, I am giving you the opportunity, both of you. If you want to, go ahead; if you do not, say so.

Opening Argument on Behalf of Plaintiff

By Mr. Weber:

Here is the situation where a man has testified that he knows he is being sued in a separation action, knows alimony [123] is requested, knows counsel fees are requested, calls up the attorney for the wife, consults one lawyer and then his partner refers him to a friend of his, Mr. Zimmerman. He goes to Mr. Zimmerman's office and in the course of those negotiations the contract is explained to him, as Mr. Woynicz acknowledged. He insists on certain changes in it after reading a draft.

The Court: By contract what do you mean?

Mr. Weber: The separation agreement.

The Court: The separation agreement. Did they enter into a decree of separation?

Mr. Weber: No. The wife, thereafter, in reliance on that contract——

The Court: Sued for divorce?

Mr. Weber: She sued for separation, and in reliance upon it, she dropped the action and has never resumed the action. In other words, the agreement required or acknowledged that the separation action had been discontinued by the wife and that this agreement was to supersede that action.

The Court: They are not divorced, then?

Mr. Weber: Well, we have this involvement in Florida: In 1947, when Mr. Woynicz went there, he went there in January of 1947, and after a 90-day residence period he filed action for divorce in May of 1947, in Florida, and she never appeared or

defended that action and service was never made personally [124] upon her in Florida. A service was made by publication, and in that manner a divorce was obtained, but it has no effect upon this separation agreement.

The Court: The divorce decree did not refer to the separation agreement?

Mr. Weber: No; it did not.

The Court: Go ahead. I understand.

Mr. Weber: In the course of these visits to Mr. Zimmerman's office, your Honor will recall that the witness Woynicz testified that he himself pointed out that he did not want his wife to have visitation privileges as requested in the agreement and insisted that that provision be removed.

He also asked for an extension of time within which to remove certain personal property from the premises.

There was also his insistence on the provision with respect to the removal of tools from the premises.

The testimony of Woynicz was that he plainly knew what the \$350 was for. He acknowledged that he knew that the \$350 was in payment to Mr. Klaw for his counsel fees.

He testified further that he knew that the \$150 represented three installments of the alimony called for by the separation agreement, from August 23, 1942, to September 23, 1942.

In addition to that, he testified further that he knew that the question of alimony was being involved. All this, your Honor, on the testimony of

Mr. Woynicz, which appears [125] without controversy.

In addition to that, we have the depositions, of course, of Mr. Zimmerman, Mr. Simon, and Mr. Klaw indicating the complex and protracted nature of the negotiations during which time Mr. Woynicz knew what was going on.

Of course, we all know that the ultimate test to be applied is not whether a person was in an extreme state of nervousness, or had lapses of memory, but, as the cases prescribe, the important test is: Did the defendant know that he was entering into a separation agreement. And I think the cases uniformly hold that many persons under different forms of stress, mental and physical, have complete competence to enter into agreements as long as they understand and know the nature of the transaction that they are entering into. And in view of the uncontradicted testimony from the defendant himself, we have an indication that he fully was aware of what was going on, and that he was entering into a contract of separation with his wife and so understood it.

Quite apart from that, we have an additional feature to this case that removes it, I think, from any area of controversy. We have a series of payments under the contract for upwards of four years. And I have the authorities here—I need not dwell upon it—that where there is any act on the part of a defendant indicating his compliance with the provisions of a contract, after he knows of the existence

of the [126] contract and after the alleged disability is removed—any act on his part in compliance therewith is in effect a ratification of the agreement.

And there is no controversy here whatever, and corroborated by his daughter, that he made these payments for over four years. He knew that they were called for by the separation agreement and issued his checks accordingly.

And so, in our view, as a matter of law the defendant cannot be heard to consent by silence and then, at a convenient time, four years later, seek to repudiate the agreement.

Argument on Behalf of Defendant

By Mr. Riseley:

Your Honor, answering his last point first, the sad thing about a man's incompetency is that he very often does not know about it at the time; he does not discover it himself. You go into any mental institution and half of the inmates will pursue you and say: "Get me out of here. I am not crazy." We have all had that happen in the practice of law.

And so far as the payments for four years were made, he did send a letter when he began to recover in 1947, through his attorneys, repudiating the agreement on the ground it was improperly procured and other grounds, and the letter counsel has submitted into evidence.

So there are numerous cases that an insane man cannot be further estopped by his own acts. *Dexter v. Hall*, a Supreme Court case that I cite in my

trial brief, is perhaps the leading authority on that.

In the separation agreement itself, I might say in passing, as I say in the trial brief, there is a question of public policy as to its terms, in that it purportedly forbids the wife from bringing suit so long as he kept up with it, and mortgaged her redress to the courts as far as divorce action is concerned; in other words, would allow the defendant to live in adultery. But that is merely a point in passing.

An ordinary separation agreement has to be fairly entered into, and without duress or mistake or fraud or anything. It is different from any ordinary contract. It is a special kind of contract.

I cited in my trial brief a case of the United States Supreme Court where they mention the New York Rule that a separation agreement is a special kind of contract, and they cite New York cases on it in that case, that the plaintiff has to show that it was fair under all the circumstances when it was entered into.

And I submit here, if there ever was an agreement that was not fairly entered into, because of the mental condition and all of the circumstances surrounding the defendant at that time, this was such an agreement, if there ever was one.

You have heard the testimony as to what his mental state was and you have heard the opinion of the expert psychiatrist, [128] a man who has studied it all his life. I could not hope to understand psychiatry. I have not had the learning and I can't discuss it.

That is the whole trouble with this question of incompetency. And it is the same thing that we argued when we argued the motion for summary judgment, is that the things that a man does who is incompetent are not reasonable, like making the payments. If he thought he could not make them, is it reasonable to make them? Well, we cannot consider that, because what a man thinks when he is incompetent is not reasonable.

The test is not only just that he knew what he was doing, but did he know what he was doing and the consequence of his act. And we have adequate testimony, it seems to me, to establish the fact that he did not know the consequences of his act when he entered into this agreement, and did not recover until late in 1947.

I might clarify a point that counsel made on the Florida divorce action. That action did not adjudicate the duty of the defendant to support his wife. He still has that duty. In other words, that was not terminated by this agreement or the failure of this agreement will not mean that he won't have to support his wife. He will still have that duty to support her, but the question is as to how much. And they have not shown that this is a fair agreement, and certainly under the [129] circumstances it is not a fair agreement on the amounts that are called for to be paid under it and she get the house and all the terms of it.

It is on its face an unfair agreement, particularly when coupled with his testimony as to the mental

condition of the defendant at the time he entered into it.

I have nothing further. Thank you, your Honor.

The Court: Any reply?

Closing Argument of Plaintiff

By Mr. Weber:

Just briefly replying, if I may, it is very interesting to note that after the four-year lapse, when the defendant elected to repudiate the agreement, his attorneys sent a letter to Mrs. Woynicz and one to him, I suppose, that if there were any question about his competency at the time he signed the agreement, he certainly would have asserted it in that letter of repudiation. And it is interesting to note that in a letter of repudiation that his Florida lawyers, who were representing him in a divorce action, in a letter that they sent to Mrs. Woynicz, they do not say anything at all about mental incompetency on the part of Mr. Woynicz at the time he signed the agreement. And it strikes me that there certainly would have been such claim in that letter of repudiation by his attorneys if there were any legal basis for the repudiation of the agreement, as attempted here, on the ground of [130] the mental incompetency of Mr. Woynicz.

So far as the separation agreement is concerned, I do not know whether counsel expects this court to try the separation action. As we understand it, the contract entered into between the parties is like any other contract.

The issue before this court is whether or not he knew what he was signing, and the fact that other amounts might have been agreed upon does not alter the binding effect of a contract, whether it be for \$50.00 a week or for some other amount.

And in this connection I desire to point out to the court that he has admitted that he paid nothing, nothing at all to his wife since October, 1949. And here is a man who gets his wife to sign a separation agreement, pays on it for four years, then goes down to Florida and gets an ex parte divorce, if I can coin a phrase, and then discontinues payments to his wife. She is in New York. And he comes up here and he says: "Well, I still recognize she has a right to support, but I do not want to recognize this agreement."

The Court: This case involves the competency of the defendant as at the time that the separation agreement was executed between him and his wife.

It seems that the evidence discloses very clearly to the court that he had knowledge and knew what he was doing; he was perfectly competent at the time he signed this separation agreement. [131]

His conduct, his actions and activities in life from that time on conclusively show that he had knowledge and was perfectly competent in signing the separation agreement. Every act in his life for those four years—president of a corporation, been signing checks under this separation agreement, recognizing its validity—he knew what he was doing and knew what had been done.

Now to come in at this late date, four years, afterwards, functioning under that agreement, and ask the court to say he was incompetent at that time, when the evidence here does not show he was incompetent at all, would be manifestly an injustice done.

Here we have a valid and subsisting and existing separation agreement executed between these parties, and they both knew what they were doing. Not only that, but they were advised by counsel. They both had lawyers and negotiated. Everything was explained to him. He was not taken by surprise.

The Court: I have reached the conclusion, and it is very clear to me, without any question under this evidence, that the cause of action alleged in this complaint is established and the findings for the plaintiff as prayed for in the complaint.

Now, what is the next case?

Mr. Riseley: Findings?

The Court: Yes, I say, unless you want to waive them. [132]

Mr. Riseley: No.

The Court: I say findings will be prepared, and present a decree in accordance with the rules of the court, unless you waive findings.

Certificate

I hereby certify that I am a duly appointed, qualified and acting official court reporter of the United States District Court for the Southern District of California.

I further certify that the foregoing is a true and correct transcript of the proceedings had in the above-entitled cause on the date or dates specified therein, and that said transcript is a true and correct transcription of my stenographic notes.

Dated at Los Angeles, California, this 25th day of April, A.D., 1950.

/s/ ALBERT H. BARGION,
Official Reporter.

Friday, March 24, 1950

The Clerk: Shall I call the calendar, your Honor?

The Court: Yes, call the case.

The Clerk: No. 9324-PH-Civil, Alexandra Woynicz v. Leonard Woynicz, motion of defendant to amend findings and to make findings more certain, and objections to findings. Also, motion of defendant for new trial.

My record shows Mr. Daniel A. Weber present for the plaintiff, and Mr. Jerry B. Riseley for the defendant.

The Court: You may proceed. You have two motions; one, to make findings more definite and to object to the findings. We will take that first.

Mr. Riseley: If it please the court: I think if I can argue my motion for a new trial first, it will make it more definite just what my objections are to the findings.

The Court: We will get at it. Why can't we have the objections to the findings first, and then your motion for a new trial will follow. Let's hear the motion objecting to the proposed findings first.

Mr. Riseley: All right, your Honor. As I say in my motion, the findings are objected to because they are uncertain, and in order to tell what was found you have to look at the complaint. In essence, all that is said is that all of the allegations of the plaintiff's complaint are true [135] and that the defenses of the defendant are without merit, and actually that isn't a finding at all. A judgment for the plaintiff tells you the same thing.

He also ignores the construction of the agreement that is sued on, and I think I can go into that now, as to why this agreement has to be construed. I intended to take this up with the motion for the new trial.

The Court: You can take it up any way you want to. I am not trying to regulate your argument, but I am saying that the motions ought to be taken up separately.

Mr. Riseley: Well, there is a serious public policy question, in fact, two of them, in this agreement. That is Exhibit A to the complaint. I don't know if it was moved to the amended complaint or not. It was introduced in evidence, and here are the two paragraphs that are in question:

"Eighth: If the Husband defaults in the due performance of any of the terms, conditions, and covenants of this agreement on his part to be per-

formed, the Wife shall have the right to bring an action either for a legal separation or for support and maintenance, or for both, and in any such action she shall have the right to ask for and obtain temporary and permanent alimony and counsel fees.

“Ninth: Unless terminated as in paragraph ‘First’ [136] aforesaid, this agreement shall survive any order for the payment of alimony,”—

and paragraph “First” terminated it on the death of the wife, or in case of remarriage, or granting of a divorce in favor of the husband, or repudiation, or death of the husband.

The Court: It seems after looking over the findings that the objections were due on the 20th, and so I signed them. So your objections to the findings are late, but the motion for a new trial is in time. As to the findings, I settled them on the 20th.

Mr. Riseley: I filed my objections here.

The Court: Before the 20th?

Mr. Riseley: Yes.

The Court: Well, unless you did, it seems that the time for the objections to findings has gone by.

Mr. Riseley: I believe I had a letter from the clerk telling me the motion had been filed as of March 17th. Here is a letter I received from Mr. Francis E. Cross. It says in the postscript:

“The motion of defendant to amend findings and to make findings more certain and objections to findings, filed on March 17th, 1950, and noticed for April 3rd, 1950, is likewise advanced for hearing to Friday, March 24th, 1950, at 10:00 A. M.” [137]

The Court: Did you file any objections to the findings before the 20th of the month? Does the record show that, Mr. Clerk?

The Clerk: I am looking for the file, your Honor.

The Court: That is what I am trying to get at. You see, if you file them within five days, according to the rules, then they were subject to being settled on the 20th.

Mr. Riseley: This one is dated March 17th. Here is my forwarding letter of March 16th.

The Court: Did you file any objections to the findings before the 20th? Is there any record here showing it?

Mr. Riseley: I put them in the mail and the clerk got them.

The Clerk: May I see that letter, Mr. Riseley, please?

(The letter was handed to the clerk.)

The Court: Because we would have to resettle these findings if that isn't correct. That seems to be the record here before me, as to the findings, I mean. We will dispose of that motion first, if it has not come in too late.

The Clerk: This is what I am after, your Honor. Is this the document referred to there?

Mr. Riseley: Yes, filed March 17th.

The Clerk: This document was filed on March 17th in the clerk's office, your Honor, and it was noticed for hearing for April 3rd. Then because of your going to be away at [138] that time, it was

advanced for hearing until today, so the findings were filed in time.

The Court: The findings were, but were the objections?

The Clerk: I think the objections were included with the motion.

Mr. Weber: Perhaps I can clarify one or two points, your Honor. The proposed findings, as will appear from the affidavit of service, were served on March 10th. On March 17th apparently Mr. Riseley did not file objections as such, but he filed a motion to amend findings, and he is apparently referring to that motion as objections. But in actuality no objections as such were filed within five days.

The Court: The rules require that, you see, and you have to file objections within five days. Now, I understand the record shows——

Mr. Weber: The affidavit shows they were served on the 10th of March, and assuming we allow a half-day for mail, the fifth day would expire on the 16th day of March, and no objections, as such, have been filed.

The Court: These findings were not settled by me until the 20th.

Mr. Weber: That is correct.

The Court: That is the first question before me, whether the findings haven't been settled, for the reason that you didn't get in within the five days your objections. [139]

Mr. Riseley: I mailed them on the 16th, but they are filed when they get to the clerk's office, which is the 17th.

The Court: That is the confusion, as to whether or not they reached there.

Mr. Riseley: I will object also that the findings were not properly served. That is why I did not get them. They were not mailed to my address of record. They were mailed to this other attorney's office, and he has been formally substituted out. I have the envelopes showing that.

The Court: I will hear the nature of your objections to the findings, first, and we will redate this settlement on the 20th. I will hear you, so that you will then be in court, and I will give you the benefit of all the doubt.

Mr. Riseley: The findings have never been served on me.

The Court: Never been served?

Mr. Riseley: Technically so, because they were mailed to 417 South Hill, and my address of record is 215 West 7th Street.

The Court: We will go ahead and hear your motion and objections to the findings, and I will have to redate this, that they have been settled. We will hear that first and give you an opportunity in court to object to the findings, and we will take up later the motion as to the new trial. There is some confusion as to this settlement of mine on the 20th, and it will be vacated, and we will try that first. [140] I think that is fair, and that gives you all of

the opportunity you have under the rules. So you continue to object to the findings?

Mr. Riseley: I was making the point that it would be necessary to make findings as to the construction and interpretation of this agreement. Paragraph Eighth said that if the husband defaults at any time the wife shall have a right to bring an action for legal separation or for support and maintenance, or both, if he defaults. Then Ninth says:

“Unless terminated as in paragraph ‘First’ afore-said, this agreement shall survive any order for the payment of alimony, temporary or permanent, which may be made in any action which hereafter may be instituted between the parties for separation or divorce, and/or any interlocutory or final judgment or decree in such action granting or denying such alimony, and/or any order modifying such order, judgment or decree in such action, and this agreement shall not be merged in any of the aforementioned orders, judgments or decrees, but shall survive the same.”

In other words, this agreement, by its terms, was not capable of being merged or put into a decree. But if you have a separation agreement, it is not a true agreement because in a true separation agreement the court can look at it [141] at the time it comes up and do a lot of things with it. But this is different. They specifically hold this agreement out. Now, what is the effect of these two paragraphs? Now, under Eighth, if the husband defaults

in the due performance, the wife can have an action to bring a divorce. We can construe that two ways. It must mean something. Does it mean that so long as he pays that \$200 per month she can't bring suit for divorce? If that is a reasonable interpretation of paragraph Eighth, of course the whole statement would be contrary to public policy, because he would be buying in effect the right to commit adultery, the right to violate any of the terms of their marriage. And it is contrary to the laws of the State of New York in common law, in that the parties cannot contract away any of the incidents of the marriage. In other words, you cannot contract away your right to sue for a divorce, any more than you can contract to allow your husband to commit adultery and not complain about it.

In this case, under the facts that we saw at the trial, there were some charges that the husband was running around. If that was the meaning of this paragraph Eighth, if that is the reasonable interpretation, then the agreement would be contrary to public policy, and I have numerous authorities on that. I believe I cited some in the trial memorandum.

Now, if we look at it another way and say, well, this [142] doesn't prevent the wife from bringing suit for divorce, that still doesn't clear our agreement, because we run into this trouble with this paragraph Ninth: This agreement is not a separation agreement, it is a bonus agreement. Now, no matter what the wife does, she can go to court and

can sue for divorce, and separation, and the court can award her any amount it sees fit. In addition to that, if she does go, is she to get this bonus of \$50 a week? The effect of this agreement is that it will pay the wife a bonus of \$50 a week, as well as all the other things she got in the agreement to get a divorce. Actually, it amounts to an agreement for divorce.

Now, I have a case here that almost ran into that same trouble. It came so close to doing just what this agreement does that the court almost held it was bad. That is *Trust Company of America v. Nash*, 98 N. Y. Supp. 734. In this case there was a separation agreement which required the husband to pay the wife \$50 per month so long as she should not remarry, and provided that in case the wife should obtain an absolute divorce the provision should continue notwithstanding any alimony awarded to the wife. Now, if it had just gone that far, the agreement would have been bad, but in this agreement it said: "Provided that the decree of divorce shall provide for no greater alimony than \$150 per month dependent upon the happening of the same events." [143]

Now, the court says:

"If this agreement could fairly and reasonably be construed as offering an inducement and advantage to the wife if she would procure a divorce from her husband, it would clearly be contrary to public policy and void." Citing cases.

They do not construe it that way because they say

the saving feature in it is the clause providing that the decree of divorce shall provide for no greater alimony than \$150 per month, and with that limitation on it, they say that kept it from being a bonus agreement, because she could in no event ask for more than \$150 per month, and she might receive less. So it wasn't like this agreement.

In this agreement she could ask for any amount of money, and you couldn't even take into consideration the \$200 a month that she was getting under this agreement. That put this agreement beyond the reach of the court. That is why it isn't a separation agreement. They contracted away all the jurisdiction of the court over this agreement. For that reason I feel this agreement here is void, as a matter of law, whichever way you interpret it. If you interpret it that she can't bring a suit for divorce, it was without their powers to make such a contract. If you interpret it that she can bring a suit for divorce, under paragraph Ninth it puts the agreement in the state that it actually amounts to paying her [144] a bonus to get a divorce because she has this money free and clear.

Section 51 of the New York Domestic Relations Law, which is merely a modification of the common law, provides that a husband and wife cannot contract to alter or do away with the marriage. That was considered in *Garlock v. Garlock*, 279 N. Y. 337.

If we construe this paragraph Eighth that she is not to get a divorce, it amounts to a corrupt con-

sent by the wife to the commission of acts of the husband which might be considered criminal. That is considered in *Levine v. Klein*, 65 Misc. N. Y. 498.

In other words, speaking on the findings now, it seems to me that some findings should be made as to the court's interpretation of this agreement, and as to the effect of paragraph Eighth and paragraph Ninth, and whether paragraph Ninth is, in effect, as the defendant contends, a bonus agreement to induce a separation.

You can't have that kind of an agreement. It can't be a separation agreement because it can never be merged into a divorce decree.

And there is another thing. You see, your Honor, if we take the findings as they are, it says in the complaint that this contract was entered into for her sole support and maintenance. If we find that to be true,—well, it isn't [145] because she had this contention, that under the one construction of the agreement this had nothing to do with the separation, and nothing to do with her support and maintenance. She was to go to court and get what she could there, and there was almost an implied provision that the husband would default. But, in any event, the court was to have no power over this agreement. This was separate. So it isn't a separation agreement, and any finding that this was for the wife's support and maintenance would be open to that objection.

Now, by the same token, I believe it is alleged

in the complaint that the defendant was a resident of the State of California. I think that the defendant testified that he was a resident of Florida, and I don't believe there was ever any other evidence offered on the matter. We have never admitted that the defendant was a resident of California. We pleaded in the answer that he was a resident of Florida, but that didn't make any difference anyway, because he could be sued wherever they found him, and they found him out here.

So I think the findings should be changed to show he is a resident of Florida and not of California.

Then I would like for a moment to go into the findings as to the mental state of this defendant. I think we got into a little confusion at the start of the trial on that point, in which I intended to outline to the court, but I [146] didn't, because the court indicated to me, so I thought, that we were in agreement on the subject of mental capacity,—the two types of mental incapacity. If you have a man that is entirely without understanding, that is one type; and then, again, if you have a man of unsound mind. Now, that is a common law rule, and in California we have that put into the Code. There are two Code sections on that, and I will find it here in a minute. It is California Civil Code, Section 38, which provides:

“A person entirely without understanding has no power to make a contract of any kind, but he is liable for the reasonable value of things furnished to him necessary for (1) his support or (2) the support of his family.”

Then they follow that with Section 39, which provides:

“A conveyance or other contract of person of unsound mind but not entirely without understanding, made before his incapacity has been judicially determined, is subject to rescission, as provided in the chapter on rescission of this code.”

That is the two types.

Now, we all heard the testimony here, and I don't think any of us can contend that the defendant was entirely without understanding. That would be a man, practically, at least at [147]that moment, an idiot, who didn't know where he was or what was going on around him at the time. But he could be of unsound mind.

We heard a lot of testimony as to the state of his health, and the worry he was going through, the fact that he had been through this severe operation, the fact that he was forgetful, and a multitude of other things. We heard Dr. Baro's expert psychiatric opinion on his capacity.

I have seen an awful lot of incapacity, your Honor. By way of analogy, I think we could find an instance of it in the Bible, and we have seen it in stories, common to all of us. I have seen a battalion commander in the field of unsound mind carrying out his duties, and running a whole battalion of 500 men. I have read instances where that has gone on for weeks, and nobody knew there was anything wrong until some junior officer happened to hear him mention that something was there that wasn't there, and then they would all begin to

talk to themselves and begin to wonder what was the matter with the old man. They began to get his orders and found they were a little bit off. We had one regional commander who took away all his equipment in the field, but still commanded a regiment for a few months afterwards, until he committed suicide, or something like that.

That is just like this man, who was president of a corporation. He was able to command his outfit, but, as Dr. [148] Baro testified, he had this suicide complex, and actually he was of unsound mind.

I have here the case of *Carr v. Sacramento C. & P. Co.*, 35 Cal. App. 439. I didn't go far to look for this case. There are probably a lot of other cases on this matter of unsound mind. Here are some of the things the court considered in finding him of unsound mind in this case. A man had been injured, and they came around and got from him a release, and he set up that when the release was pleaded that when he had executed it he had been of unsound mind. It seems to me looking at this case that the evidence was much weaker than Mr. Woynicz's. Before I start on it, I will say that where you do have a case of unsound mind, as distinguished from total misunderstanding, you have to have a necessity for rescission. I think we have that in the Woynicz case, as they had it in this case, and I will take that up a little bit later. But this man's physician testified that the plaintiff was suffering from "traumatic hysteria, bordering on melancholia; that he complained of disorders in

digestion, did not sleep well, did not care for social intercourse with friends or relatives, was depressed, had financial worries, did not seem to carry on conversation to any extent, 'on account of his injury which resulted in more or less depression—traumatic hysteria; for that reason I do not think that the man was in a position to judge the result of the [149] form of this contract'; his nervous condition had some effect upon his will power; 'his mental condition was certainly abnormal' * * *"

That is not as strong expert testimony as Dr. Baro gave.

Then his wife testified that "normally her husband was a jolly, healthy, sociable man, but predisposed to nervous disorder; 'at times he was almost bordering on insanity'; just before the accident his mental condition was good; shortly after leaving the hospital the first time and before the release was given he became depressed and declined to converse with her. He would shun his neighbors, whom he had previously been glad to see; he took no interest in home matters and neglected his personal appearance, 'he was nervous, forgetful, stupid, and dull, and would hardly sleep. At the time the release was executed he was morbid and melancholy and did not seem to be in a fit condition to transact business of any importance'."

What I am getting at is this: We turn over here in this case and we go into lengthy evidence of the discussions that they had with this man of unsound mind, when they were getting this release. He re-

membered practically everything. He remembers an awful lot more than Mr. Woynicz remembers, even with the help of the learned counsel for the plaintiff on cross-examination. Here he asked what time it was, and he remembered the exact words.

“... he says, ‘In no event do we allow more than One Hundred Dollars for hospital and medical fees’,”—this is the plaintiff talking—“and said that I was getting all that I was entitled to under the Act, which was twelve weeks, he said, sixty-five per cent of my wages for twelve weeks was all I was entitled to under the Act. He said—he took out his watch and looked at it—he said he would have to catch the train for San Francisco at 3:30, he says to hurry, ‘Do you want to take that or do you want to sue the company?’ ‘Now,’ he says, ‘if you sue the company, it will be a long drawn-out proposition; aside from that we have a signed statement from the foreman that it was entirely your own fault you got hurt’.”

This man remembers all that and yet the court found that he was of unsound mind at the time that he executed that release.

Now, as regards the findings, I notice when your Honor gave the decision he mentioned about this man going for four years and making these payments before saying anything about it, and I think that is in the findings themselves. Well, that, by itself, doesn't mean anything unless the court held that Mr. Woynicz was of unsound mind at the time he executed [151] this agreement and recovered it

sometime between 1942 and 1947. There was no evidence on that given.

Our testimony that we offered, and the only testimony that was offered, was that the state of his mind remained the same between 1942 and the latter part of 1947, when Dr. Baro said he began to recover. In March, 1947, this letter of rescission was written, in which he disaffirmed the contract, he rescinded it. There was a rescission between the parties, and we all understand rescission and we know that you can have that type of a rescission. I don't know that I cited authorities on it in my trial brief, but it is a matter of general law. Assuming he was of unsound mind in 1942, as distinguished from being totally without understanding, and assuming this condition continued until 1947, and assuming at that time his attorney sent this letter to the plaintiff, saying, "We repudiate this agreement because it was wrongfully obtained," I say then that, as a matter of law, there was a rescission of the agreement and that the defendant isn't liable on it.

So we have got to make findings in here because of the making of payments over that period. If he is still of unsound mind, it can't make any difference. The burden rests on them, your Honor, to establish this lucid interval.

I think I have a case on that, one that I cited in my trial brief. But, as a matter of law, on the evidence there [152] is a shifting of the burden. When you get evidence in that they are dealing with a man

who had an unsound mind, once you come up to that, there is a burden that shifts to the other party to show that the transaction was fair and reasonable and was executed within a lucid interval, and that there wasn't any fraud or undue influence used. I am looking now at *Aikens v. Roberts*, which is 164 N. Y. Supp. 502, at page 504:

“Defendants grantor, having been shown to be of unsound mind,”—and they discussed the evidence—“the burden was cast upon the defendants of proving that their grantor had lucid intervals, and that the transactions complained of were executed during those periods.”

Citing many authorities, one of which is *Greenleaf on Evidence*.

——“that the transactions were fair, open, voluntary, and well understood, with adequate consideration;”—Citing authorities—“and that the acts of their grantor were normal acts and conduct;”—Citing authorities—“and that no fraud or undue influence was used.”

Citing many authorities, and citing *Pomeroy on Equity Jurisdiction*.

“The defendants have not met the burden cast upon [153] them by the law where transactions are had between parties who do not deal on terms of mental equality.”

I feel here the defendant made this *prima facie* showing; that he was of unsound mind, and that the plaintiff's evidence that was introduced was not sufficient to overcome any of that showing, so that

it would be necessary for the court to make findings on that point. Then I have said in my objections to the findings that the court didn't make any finding as to what effect the defendant's letter of rescission had. It was either a letter of rescission or not.

Now, we didn't plead that letter, your Honor. We left that to the plaintiff to plead. She had to plead it to come within the terms of the agreement, and when counsel pleaded it, and when he did plead it, he pleaded the rescission, because we had always contended that the unsound mind continued during this period. And I don't think that he was misled about our not pleading that letter because the letter was sent to him, and he pleaded it. He relied upon this letter to excuse the plaintiff from waiving notice of the divorce, which was a condition precedent to the suit, according to the terms of the contract, so that some findings are going to have to be made on that, if it did excuse him from a notice, or whether it was actually a rescission.

Then the court is going to have to make findings as to [154] whether the defendant recovered his capacity between 1942 and 1947, at the time he made these payments. Then no finding is made upon the essential point of plaintiff's recovery, that the agreement in all respects was fair and reasonable, in view of all the circumstances; entered into without coercion, and with full knowledge of all the circumstances, and so on. And that is necessary in the findings because of this shifting of the burden. When we introduced this great amount of evidence as to the unsound mind, the burden, according to

these authorities, and I believe it followed Wigmore on Evidence, was shifted over on the other side, to come back to show that the man was of sound mind when he executed that. I don't believe there is enough evidence on it.

That will conclude my argument as to the findings—to amend the findings and objections to the findings.

The Court: We will hear from counsel for the other side. Then we will take up the other motion, after we get through with the objections to the findings.

Mr. Weber: May it please the court: A man who was the president of a corporation with 150 employees is sued for separation by his wife in the summer of 1942. He goes to a lawyer who participates in extended negotiations with his wife's lawyer covering a period of about two months; persuades his wife to drop the separation action and not to go [155] out and get a divorce, which is the opposite of what counsel is arguing, and in the course of those extended negotiations, participates in the negotiations and consults on changes in the agreement, insists vehemently on certain custody provisions, argues for an extension of time to remove certain tools from a certain location, and testified he knew exactly what the \$50 a week was for, testified, further, he knew what the \$350 was for that he gave the wife's lawyer, knew what the \$150 was for, representing three weekly payments, and testified, further, his daughter—corroborated by his daughter, by the way—that she, too, partici-

pated in negotiations, represented at all times, by an attorney. Thereafter, he makes payments on the agreement for upwards of four years. And he was on the stand and admitted it. He was shown a number of checks and asked, "Do you know what this was for?" His daughter testified the checks were paid because of that separation agreement. It goes on for four years. He goes down to Florida in 1947, and during the period of alleged insanity was sane enough to get a divorce from his wife of twenty-six years' standing. During that period he has a lawyer and sends a letter of rescission repudiating the agreement, after paying on it for four years. Never is a word said about mental incompetence. Then he comes out to California and he says to this court, after not making a single payment since 1948, he says the agreement [156] was not good because, "No. 1, I was insane; No. 2, it is illegal."

I would like now to say a word about the question of legality. Of course, the agreement does nothing of the kind that Mr. Riseley talks about. It does not encourage divorce. It does the opposite. The purpose of the agreement was to preclude a severance of the marital ties, and that was the purpose, and on the strength of it the separation agreement was drawn up.

We know that if two parties enter into an agreement and the inducement is for the other person to get a divorce, that is the object to be brought about, of course, that could be held to be unenforcible. But this does nothing of the sort. It does the reverse.

This agreement is identical with thousands of separation agreements of the conventional type, where there is an agreement that this contractual provision shall abide and shall survive any other award. And the implication is very simple. A court can still make whatever award it wants to if a divorce action is brought. It is meant that the parties were left to their contractual remedies. And that is done elsewhere and everywhere where there is an award of money in lieu of division of property. That contains this conventional provision. It does not oust the court of making an award as the circumstances of the parties require. It says: Then you shall be left to [157] your contractual remedies, which is perfectly legal.

It would be a waste of time to cite all of the hundreds of cases where these provisions are uniformly upheld.

So far as the question of residence is concerned, Mr. Woynicz was asked where he lived, and he said, "232 West Imperial Highway." He said that he is living there with the woman whom he married after this alleged divorce in Florida. And he was also asked what the plaintiff's address was, and he indicated her address at the Brooklyn address where she has been living for years, and it is the very property in which she got a life interest in the separation agreement. So the question of jurisdiction now comes rather odd and belated, and, in our view, is entirely unfounded, particularly, in view of the trial brief of the defendant, where he says:

“The Ninth Defense, that defendant is a resident of Florida, is abandoned, without admitting that defendant is a resident of California, or is not a resident of Florida.”

He just abandons the defense. And quite apart from that, he was asked where he lived, and he said so, and there was no contrary evidence on the issue of residence.

Now, so far as the findings are concerned, I think the court will get the conviction that it is as simple and clean-cut a setting of findings as one would like to have. There is [158] nothing complicated, there is nothing involved, and nothing fragmentary about it. The findings, while they do not cover each and every allegation of the complaint, there is no purpose in adding a number more pages to it if by a simple incorporation by reference we can cover it. Anyone can readily know what the court has found when there is a simple averment that everything contained in certain designated paragraphs of the complaint are true. That is clear and precise. There is no point in adding five more pages, or four more pages, to recite the identical allegations of the complaint which the court finds to be true, and in most of the cases that I have seen passing through the courts here, that practice is uniformly followed, and in several decisions has been specifically sanctioned. There is no point in extending them.

On the issue of incompetence, what could be more simple and more concise than the following averment:

“That at the time of the execution of the agreement dated September 22, 1942, which agreement is specified in the amended and supplemental complaint, the defendant was mentally competent to enter into said agreement and fully understood and comprehended the nature and purpose of said transaction; that the same was entered into by the defendant freely and voluntarily, and that at [159] the time of the execution thereof the defendant was not acting under any duress or other disability.”

Then you have another paragraph that says quite simply and appropriately:

“That between September 22, 1942, and March 7, 1947, the defendant made or caused to be made, weekly payments in the sum of \$50 pursuant to the provisions of said agreement which payments were made by the defendant with knowledge of said agreement and its provisions and of the nature of said payments.”

That is clearly borne out by his own testimony, that he knew what the checks were for.

Even the so-called expert on cross-examination testified, as the court will recall, after he was shown a number of checks and was asked, “In your opinion, did the defendant know what he was doing?” And the answer was, “Yes.” And the daughter so testified. So that we have ample proof that at the time of the making of said checks he had knowledge of the payments.

Now, it is not necessary to go outside of the essential ultimate facts to formulate the judgment and

findings. For example, on each allegation in the answer, no matter how evidentiary it might be, it is not essential, for example, to [160] make a finding of fact on whether or not it is true; that this action was brought or prosecuted while the defendant was working 12 or 18 hours a day, or any of the other evidentiary averments in the answer. There is no necessity to encumber the findings all along the line with these incidental and extraneous factual or evidential claims of the defendant.

The important thing in the findings is to embody the ultimate facts, to embody the judgment, so that they are clear and concise, and there is no confusion whatsoever. I think the findings should stand as signed, and the judgment as entered is eminently proper and should be permitted to stand.

The Court: Are you through on the objections to the findings? Both sides?

Mr. Weber: Yes.

Mr. Riseley: Yes.

The Court: After reconsidering the proposed findings of fact and conclusions of law and judgment, the court has reached the conclusion that they refer to certain paragraphs in the complaint which contain allegations of fact involving the determination that the court made in deciding the case very clearly and explicitly, and counsel for the plaintiff this morning has very clearly and logically explained the contents of these proposed findings, and coupled them with the [161] allegations of the complaint which are allegations of fact involved on the questions raised.

The court adopts the views expressed here by counsel for the plaintiff, that that is a specific and fair proposed findings of fact and conclusions of law, and for that reason the objections to the proposed findings of fact and conclusions of law will be denied, and they will be settled as of this date, because I am giving him the opportunity this morning to be heard on it. So your motion will be denied, and instead of being settled on the 20th, they are being settled as of this morning, after hearing counsel for the defendant, and they will be redated March 24th.

The Clerk: And will be refiled as of this date?

The Court: Yes.

Mr. Weber: The same, I take it, as to the judgment?

The Court: Yes, as to the judgment.

Now we will hear your motion for a new trial, which comes up at this time. I entered the matter of the decision of the case on the merits, and I think the findings inform the defendant as to the findings of fact and conclusion of law very clearly. So the clerk can file this as of now.

The Clerk: Has your Honor redated them?

The Court: The 24th. I will put in here "Allowed" on this date, too. You might make a note that the objections on the record are denied. Also, let the record show that [162] the objections made to the proposed findings and decree this morning are denied.

Now we will hear the motion for a new trial.

The Clerk: Shall I write that on here for your signature, your Honor, or do you want a minute order?

The Court: You might write that on here, and you can make a minute order, too, so that there will be no question but what the objections to the proposed findings are denied.

Mr. Riseley: On the motion for the new trial——

The Court: Let me complete this just a minute, after the clerk hands it to me, about allowing the judgment and the proposed findings and decree which I have just ruled on, and which informs the defendant as to the conclusion the court reached on the case at the time it was presented. That will clear the record on that pretty well.

The Clerk: Yes, your Honor.

The Court: You may proceed with your motion for a new trial.

Mr. Riseley: The first ground that we have set out is irregularity in the proceedings of the court and by adverse party by which defendant was prevented from having a fair trial. Under that I might say we made that against two acts of surprise which ordinary prudence could not have guarded against. What happened when we introduced the depositions? I thought, and my client thought, the court would [163] read those depositions and consider them. And you will remember the court asked me did I understand what he said was so? Well, yes, what Weber said the deposi-

tions contained was so. I couldn't say it wasn't.

The Court: Didn't the court ask counsel on both sides as to what the depositions contained, and you argued it?

Mr. Riseley: Yes.

The Court: And I considered them, and considered what both of you stated the depositions contained. So you were not prevented from showing what the depositions contained, because counsel for both sides presented what the depositions were.

Mr. Riseley: Did your Honor read them?

The Court: Well, you explained them here fully before, both sides. I had the depositions here before me, and you explained them to me during the presentation of the evidence.

Mr. Riseley: Mr. Weber explained them, but I said at the time that I had other things to cover, and I thought your Honor would read them.

The Court: Well, I considered the depositions, of course, as explained to me by both of you people as to their contents very fully, and I asked you about them. You were both heard and were given an opportunity, and I considered counsel was explaining it before me. It is the same as though you stipulated to a fact. The depositions were considered. Of course I considered them because you presented them to me, as to what they contained. Go ahead.

Mr. Riseley: Well, I have got across my point. I was under the mistaken impression that the court

was going to read them, and I assert that as a ground in the motion.

The Court: When you tell me what the deposition contains, that is sufficient. There is no question about it. Both of you did, and you argued at length in the main argument before I decided the case. So your depositions were not ignored and the contents as explained by counsel at the time were considered.

Mr. Riseley: That is what messed up the case.

The Court: If it was messed up, you lawyers messed it up.

Mr. Riseley: Yes, your Honor.

The Court: And you didn't mess it up, but you made a clear statement of what the depositions contain, both of you, in your main argument, and I took it you understood what their depositions were, just as if you presented them.

Mr. Weber: I go one step further, your Honor. I think it is unfair of him to say that because the matter was deferred until we both were agreed, and we had to concur upon the contents.

The Court: You agreed before me as to what?

Mr. Weber: I think it is unfair of him to say that. [165]

The Court: I considered the depositions for both of you.

Mr. Weber: And the reception of the depositions was deferred until we agreed.

The Court: I took it for granted that both of you presented the depositions to me fairly and just

like any other instrument that you offer. You had the opportunity, counsel.

Mr. Riseley: I will assign further an irregularity in this instance: The court, when these depositions were being considered and Mr. Weber was talking on them, I showed a hesitancy, I was afraid that that was what was happening, but I couldn't understand then what was happening, and the judge said to me, "What is the matter? Can't you understand anything I say?" And I said, "Yes, sir." And at that time——

The Court: What judge said that to you? What judge made that remark?

Mr. Riseley: The judge that tried the case, your Honor. He said, "What is the matter? Can't you understand anything I say?"

The Court: Here from this bench?

Mr. Riseley: Yes.

Mr. Weber: You mean Judge Cavanah?

Mr. Riseley: Yes. That was when you were introducing these depositions, and all these people were waiting to try [166] this other case, and everybody was in a hurry.

The Court: I asked, "Did you understand me?" And you seemed to. That is certainly not offensive to you, is it? You had full opportunity to present and you did present the depositions, on both sides, and if I did make that statement, I was inquiring whether you understood me.

Mr. Riseley: When I said, "Yes," I was saying I understood you.

The Court: I can't read your mind, and I have to take what counsel says. I can't read any other view that you had in your mind that you didn't explain at the time.

Mr. Riseley: Another ground is: The insufficiency of the evidence to justify the decision. I read somewhere the other day that a lawyer is not limited in his argument just to being logical, but that he can be as illogical as he wants to. That, to me, typifies this case. The defendant was represented by an attorney. Yes, I suppose so. I suppose if that is so you have guaranteed insurance that any time you exact from an insane man an instrument, if there was an attorney in the case, it is good, it is positively good. That would be the same thing as saying if you are able to bring up here and put a psychiatrist on the stand to say a man is incompetent, he is absolutely incompetent. It is no more wrong to say one than the other, and yet we wouldn't want to say either one of them. And that takes us back to [167] these depositions.

I said to the court that there were inconsistencies in the depositions, and the court understood that, as to the conduct of this attorney, who has been established here as a judge, as a justice of the peace, or a city judge, or something. He was practicing at that time. If we had gone into this more fully, and if we had a new trial, we could do so. I put into my interrogatories, I thought, enough to indicate that this man was engaged in some other

kind of business as well as practicing as a lawyer, as well as being a judge; that he was managing a real estate business.

Mr. Weber: Where in the record is there any suggestion of that?

Mr. Riseley: Then we have new evidence, newly discovered evidence.

Mr. Weber: He was asked that question in the interrogatories, and the answer was, "No." I don't think counsel should be permitted to put into this case a lot of alleged matter that has no place in the record at all.

Mr. Riseley: It is fair to comment on the fact——

Mr. Weber: He was asked that question, and the answer was, "No." The implication he is trying to put before the court is that something about his counsel——

Mr. Riseley: The defendant said he talked continually about the Moscow trials to his attorney.

Mr. Weber: May I inquire what the relevancy is as to whether Mr. Zimmerman had some extraneous things he talked about?

The Court: I will hear both of you. Go ahead with your argument in the regular way. I will hear both of you.

Mr. Riseley: I was commenting on the importance of the defendant being represented by an attorney all the way through this case. The defendant knows more about what went into Judge Zimmerman's mind. The questions he asked in the

deposition, and he related things, separate things that could have gone through Judge Charles Zimmerman to Jack Klaw, and went to the other side. I don't know if that is an implied collusion, but it is the truth. It is well founded that they have a lot of information, with the two boys working back east hand in hand. The Simon and Zimmerman depositions conflict because Simon says he told my client, "You are sure to lose this case." Zimmerman denies any such thing. Then they all deny that my client said anything about the Moscow trials, and yet according to my witnesses he talked about the Moscow trials all the time. He said all the time, "Let it be Moscow trial. Let it be Moscow trial." And if they say that is not so, there are three possibilities. They can all be telling the truth. If they are, then my client was suffering from a hallucination, he thought he was talking about the Moscow trials. Otherwise, either my client [169] was lying, or they were lying. Those are the three possibilities.

So the inference that should be drawn about whether or not the defendant was represented by an attorney should not be so difficult, in view of the other testimony, in view of the testimony that he was of unsound mind at the time he executed these instruments.

Now, in this case, if it takes a new trial to do it, it won't take very long, because we have got almost all of the evidence. We can probably discover a little more, but these depositions are good,

and that was the plaintiff's case, and I don't think she has established her case.

Now, like this defendant's discussion with his attorney, I ask, "Did they prove anything?" I don't think that they did. Most of the contents of that discussion were put in the plaintiff's mouth by the learned and well-informed attorney for the plaintiff, as to what the discussions were. And he was well informed. He asked questions that never came out in any of these depositions, never came from anywhere, and the plaintiff said, "Yes." All these intricate details about these tools. If they want to put it in so as to draw an inference, the court should be allowed to look at that and draw the inference.

I submit, your Honor, he was mentally unsound. He wasn't totally without understanding. He wasn't an idiot. [170] I can take you out here to the County Hospital and take you to the Army Hospitals I have seen, and I can show you men, and those men that are of unsound mind, mentally ill, have good memories, and they will talk to you and tell you what happened last week or tell you what happened last year, and appear perfectly rational sometimes.

Dr. Baro characterized this man as being a reactive depressive, a form of psychosis, a manic-depressive psychosis. Those people are noted in the medical books, as a matter of general knowledge, some of them, as being terrifically clever at times. They get such big ideas that lots of people

are taken in by them, and we have all had them in our practice. We have had people come in with these big ideas. Every one of us has a few that we avoid in our practice. I have a lady that comes in and says she has a claim against the Industrial Accident Commission. She is coherent, and can tell you what happened yesterday or the day before yesterday, but she isn't of sound mind.

So in his discussions when he says that he remembered some of this, it doesn't necessarily prove that he was of sound mind, in the face of all this other evidence as to his symptoms, and the expert evidence as to the conclusion that he was of unsound mind. By the same token, what was the effect of these payments? What was the effect of these checks? They were fed to the daughter and sent to the [171] mother. He wrote them. Attorney Klaw says here in the deposition that he had to send a portion of them back because the defendant would either forget to date them or forget to sign them. There are two inferences there. Either he was careless, or he was, as we contend, of unsound mind. He didn't do things right. They drummed it into him that he was supposed to sign those checks, and he did. On the first few checks, Attorney Zimmerman wrote some out for him and handed them to him to sign. He said this was to get rid of the law suit. So if he was of unsound mind at the time, and remained of unsound mind clear through to 1947, the checks don't mean anything. He could still have gone on, and he was

paying them to his wife, but that wouldn't mean anything.

Then I don't think that the right inference has been drawn from the evidence as to this rescission, as to what the effect of this agreement I speak of in my motion on the findings was. I think that constituted a rescission, in effect, to cut off all the legal effect of that obligation, and I think that in the face of the expert testimony, as well as with all the other testimony we put on, there was a preponderance of evidence establishing that we had come up and reached that point of showing that he was of unsound mind, and left then the burden on the plaintiff to show that he had a lucid interval or that the agreement was fair and [172] without duress, without undue influence being exercised. I think that the defense went that far, and that the plaintiff didn't offer any evidence to controvert it. She might be able to do so on a retrial. I don't know. But I think that for that reason there was error in law in not considering the substantive effect of adducing that much evidence, and the procedural effect of it. I cited the case of *Aikens v. Roberts* as authority for that.

The error in law occurring in the trial is the holding by the court obliquely now, since the date of the findings have been changed, that this agreement cannot be held to be and this agreement is not contrary to public policy. I think that the court would have to construe this agreement, and in any way of construction it has been pointed

out and I don't believe it can be construed as within public policy.

Now, we heard a lot of talk about these agreements being signed every day and being held good every day. I venture to say that, with all this stack of paper, I have read practically every case on property settlement agreements that has been decided in the State of New York, and most of the other states, and I haven't seen any case in which this paragraph Ninth has been decided in exactly that form. I cited the case of *American Trust Co. v. Nash*, which had the same feature in it, with the \$165 limitation on that bonus. But this one in its paragraph Ninth gives this woman a flat [173] \$200 a month, a bonus of \$50 a week. It gives her this house, which is a three-apartment house. That is mentioned in some of the depositions, and that has an income of about \$100 a month. Then, in addition, she has the right to go into court, and she can't bring this agreement in there, neither can the husband, and get all the alimony she can get there.

In other words, it would be like saying, "Listen, sue me for divorce, and you can get alimony, and I will give you \$50 a week on top of that, or \$100 a week," or whatever he said. Would that be a valid agreement? Of course it wouldn't.

I think that for that reason error in law in interpreting this agreement has been committed, and that the only way to interpret the agreement is

that it is void, as contrary to good morals and public policy.

The Court: What is your recollection as to the date of this divorce that was granted down in Florida?

Mr. Riseley: No evidence was entered on that, but I have that decree here. Another thing, specifically——

The Court: Let's get through with this date, first.

Mr. Riseley: The 3rd of September, 1947.

The Court: There was a divorce entered finally?

Mr. Riseley: What is that?

The Court: I say, there was a divorce entered?

Mr. Riseley: There was a divorce entered. [174]

The Court: In September, 1947.

Mr. Riseley: While we are at it in this informal manner, let's go one step further. This was an action to set aside the property settlement agreement that is being sued on here, brought down there in 1947 on substantially the same grounds, and we are resisting it here. They had service by publication. They had actual notice to the plaintiff here, the wife. There were protracted negotiations with her attorney down there, and in the end she did not enter any appearance in that suit, because she was afraid to come down and litigate the agreement, as it was, when the evidence was a little fresher, to be sure. So they granted this decree of divorce, but, specifically, the court in Florida does not make any finding as to the valid-

ity of the property settlement or as to the defendant's obligation to support the wife, as she has the right to do, and as I pointed out to the court, and even with this judgment she can still do it. As I pointed out, in the agreement this is merely a bonus. Was that a bonus for him to go down there and get a divorce decree?

The Court: What do you contend was the life of this separation agreement? How long does it last?

Mr. Riseley: It lasts, by its own terms, for the life of the wife, or until she gets married, or until the death of the husband, I believe. It is: [175]

“The death of the wife.

“The remarriage of the wife.

“The granting of a decree of divorce in favor of the husband against the wife by a court of competent jurisdiction in the State of New York provided the granting of such decree is based on the ground that the wife is living in open and notorious adulterous relations.

“The repudiation of this agreement by consent of the parties provided said repudiation is in writing and duly signed and acknowledged by each of the parties thereto.

“The death of the husband, but nothing herein contained shall be deemed to relieve the estate of the husband from any obligation incurred hereunder by the husband prior to his death.”

The Court: What period of time do you con-

tend is involved in the amount sued here in this case before me? What years?

Mr. Riseley: The judgment runs from some time in 1947 up to the present date, I believe. Counsel has said he hadn't paid her anything from 1947.

Mr. Weber: 1948.

Mr. Riseley: That was an oversight. Between 1947 and 1948 he paid her \$50, sometimes \$30, and sometimes \$20, a [176] total of \$970.

The Court: That was after the divorce was entered?

Mr. Riseley: Oh, yes. He recognized she was still his wife. The Florida court specifically pointed out that they were not going to try to adjudicate his duty to support the wife. It said they will operate——

The Court: They will operate under the separation agreement. The court took that view of it in the divorce proceedings, so that left it open.

Mr. Riseley: They had no jurisdiction, you see.

The Court: They left it open, because the court had no jurisdiction to determine the separation agreement. So they left it still in existence. That is what I was trying to get your view on.

Mr. Riseley: That is right.

The Court: They didn't set it aside or didn't litigate it down there.

Mr. Riseley: No, although she had noticed it. It was down there to litigate if she wanted to litigate it. In other words, the courts have been open to her since 1947. I mean she was getting sympathy because she hadn't got any money since 1948.

The Court: But the defendant went down to litigate the divorce.

Mr. Riseley: My client did. [177]

The Court: In 1947?

Mr. Riseley: Yes.

The Court: And he didn't get set aside this separation agreement he had made prior to that time.

Mr. Riseley: That is correct.

The Court: So, isn't that still open?

Mr. Riseley: The separation agreement?

The Court: If it was never litigated or set aside. And that is what we are considering here. It is still here.

Mr. Riseley: If it is a separation agreement. I say it lacks the form of it because of the bonus provision.

The Court: Whatever it was, it is an agreement in writing, and they both made it?

Mr. Riseley: That is right.

The Court: And it has never been disturbed by any court?

Mr. Riseley: That is right.

The Court: That is your situation, then, under those circumstances, that you are attacking the agreement's validity, to see if he was competent. I understand your point.

Mr. Riseley: You mean if the man was competent——

The Court: It would still be in existence.

Mr. Riseley: Then we are back in the public policy field.

The Court: Go ahead. I understand your contentions.

Mr. Riseley: Well, it is our contention that this paragraph Ninth of the agreement is just the kind of agreement that offended in this American Trust Company case, that is, by keeping the court from ever touching this agreement.

You understand, when we were talking about this Florida divorce a moment ago, they didn't just bring it in there. The action was an action in equity to set this agreement aside because it was wrongfully procured and against public policy, but they didn't decide it because they didn't have any jurisdiction over it. But most of your separation agreements are in equity. In the absence of formal proof here, the remedy on a separation agreement traditionally is an action on specific performance in equity, whether they bring it into the divorce court or not. I have looked and looked, and I can't find any cases. It is like a husband suing his wife for assault and battery. You don't do that. You don't find any cases on that, when they are still married, because there are only certain things people can litigate between themselves, and there are only certain cases where they can do it.

There is some question in my mind as to whether or not—and I think I raised it—as to whether or not this complaint states a cause of action. It doesn't allege the marriage. It doesn't allege the divorce. It alleges they are still married and says: I am coming into Federal Court and I am suing.

Can the wife sue her husband for anything [179] except divorce, or separation and support, or for the specific performance of a separation agreement?

That is kind of getting off the beaten track, but, anyway, on this paragraph Ninth my argument is by keeping it away from the courts it is, in effect, a bonus to the wife to do something. Now, on the face of it, it might be a bonus to her to get a divorce. On another view of it, it might be a bonus to her not to appear in the Florida divorce action. I don't have any evidence to offer on that, so that you can't draw that kind of an inference. You can only draw the kind of inference from what the effect of it is, that this is to be in addition to whatever the court might give her at any time. That it is to be in addition to that. So for that reason I say that it just misses doing what this settlement agreement in this *American Trust Company v. Nash* case did do, and that is a New York case. They held that was valid because of that \$165 limitation.

Counsel said he read hundreds of cases on this, and that it was in the form books, and I have never seen it. I have never seen any kind of settlement agreement where, when you finally came in and sued for separation, the court could not take and look at it and say, "I incorporate it in the decree," or "I modify it to say," or "I do this or that to it," because otherwise you have one where the parties try to keep outside the reaches of the court, and it can amount [180] to a bonus.

An agreement, as counsel for the plaintiff pointed out—we all know that property settlement agreements, when they started out, the usual thing was to promise the wife so much if she would get a divorce, and that was held void. So they began to hold more and more of them void, so the parties had to get more skillful so as to accomplish the same result and still not have a void agreement. So they tried everything else. In this American Trust Company case they tried just what was tried here, except they had just enough wisdom to put that \$165 limitation on it, which distinguishes it from the agreement before us. This agreement here provides just for a flat bonus of \$50 a week, and anything the court might give her for alimony, which is an inducement, an illegal inducement to the wife to get the divorce. That is my view.

Now, the husband, as your Honor pointed out, and we all know, went and got the divorce. The wife knew about it, but she didn't litigate it. From that you can draw an inference that this agreement—you see, this agreement has a lot more in it than the \$50 per week. There is testimony in the depositions here—I don't know whether elsewhere or not—there is in Mr. Woynicz's deposition as to this house on Wellman Avenue, that the house has three apartments. I understand—I don't know whether it is in evidence—that [181] as to the income from the apartments, she is occupying the one and renting the other two for about \$100 a month. She has a life estate in that. It was a pretty good

agreement, but the view of it I take is that it is contrary to public policy.

I don't have anything more on the motion, your Honor.

The Court: Before you close, the court now suggests to you and is granting to you the opportunity on this motion for a new trial to read in full, if you wish, or explain again, the contents of these depositions that you have referred to, on the question as to whether they were fully before the court when the case was tried on its merits, before I decided it. While I am satisfied they were fully presented to the court by both counsel, and introduced in evidence, and I considered them, since you have asserted here that you think it is unfair for the court to go on, after I thought the contents had been agreed to by both counsel, I am now granting you this opportunity, if you want, to read these depositions in full before me now, or explain them again, so that there can be no misunderstanding or thought that the court ignored you on these matters. But I want to say I am sure there is nothing there that would change my view on this motion for a new trial. But so there will be no question about the depositions being considered by me on the hearing, you may proceed to read them, [182] if you wish, or you may proceed on the record as it is before me.

Mr. Riseley: I think I will read the depositions, your Honor.

The Court: You can go ahead.

Mr. Riseley: This is No. 9324-PH, deposition of J. Charles Zimmerman:

“The deposition of J. Charles Zimmerman of 66 West Park Avenue, Long Beach, New York, was taken before me, a notary public in and for the County of Nassau, State of New York, on the 18th day of November, 1949, at 66 West Park Avenue, in the County of Nassau, City of Long Beach, pursuant to the annexed notice and a copy of a stipulation annexed thereto, which copy has been compared by me with the duplicate original thereof and is in all respects an exact copy thereof, on behalf of the plaintiff in the above-entitled action pending in the above-named Court.

“Jack Klaw, Esq., of 521 Fifth Avenue, New York City, State of New York, appeared as attorney for the plaintiff, and after waiting until 2:35 p.m., no one appeared as attorney for the defendant. Written interrogatories under Rule 30(c) FRCP to be propounded to the aforesaid witness by the [183] officer taking the deposition under the aforesaid notice, was delivered to me, a copy of which is hereto annexed.

DEPOSITION OF
J. CHARLES ZIMMERMAN

being by me first duly sworn to tell the whole truth
as hereinafter certified, testified as follows:

“Direct Examination

“By Mr. Klaw:

“Q. What is your full name?

“A. J. Charles Zimmerman.

“Q. And your residence?

“A. I live at 175 West Beech Street, Long Beach, New York.

“Q. You are an attorney admitted to practice in the Courts of the State of New York?

“A. Yes.

“Q. How long have you been so admitted?

“A. Upwards of 30 years.

“Q. And you now maintain your law office at 66 West Park Avenue, Long Beach, New York?

“A. Yes.

“Q. And in August, 1942, were you a member of the Judiciary of the State of New York?

“A. Yes.

“Q. And at that time, as I recall, you were a Judge [184] of the City Court of the City of Long Beach? A. Yes.

“Q. How long had you been such member of such Court? A. Since January 1st, 1926.

“Q. Continuously thereafter until when, Judge?

“A. Until December 31st, 1945.

“Q. And that was an elective position?

(Deposition of J. Charles Zimmerman.)

“A. Yes, for all except the first four years.

“Q. And in 1942 were you a member of the law firm of Zimmerman & Simon? A. Yes.

“Q. And do you recall in August, 1942, that you were retained by Mr. Leonard Woynicz Sianozecki, also known as Leonard Woynicz, in connection with a separation action brought against him by his wife, Alexandra Woynicz Sianozecki, also known as Alexandra Woynicz, in the Supreme Court of the State of New York, County of Bronx?

“A. Yes.

“Q. At the time when he retained you, did Mr. Woynicz deliver to you a copy of the Summons and Complaint and the plaintiff's Notice of Motion, with the affidavits annexed thereto, for temporary alimony and counsel fees that were previously served upon him in said action? A. Yes.

“Q. Do you still have a copy of the said Summons and Complaint and Notice of Motion and affidavits?

“A. No, but I have a penciled memorandum on the file which reads, ‘Delivered original S & C P T and Motion papers to Mr. Woynicz.’

“Q. Do you—I show you a paper that purports to be the original Summons and Complaint and Notice of Motion and affidavits for temporary alimony and counsel fees, and ask you whether or not you recall receiving a copy of such papers?

“A. I cannot at this time recall whether or not this is the correct copy or not. It seems to be.

(Deposition of J. Charles Zimmerman.)

“Q. Do you recall the amount of temporary alimony sought by the plaintiff in her said motion?

“A. I am not sure, but my recollection is that it was \$100 weekly.

“Q. Do you recall the amount of counsel fees sought by the said motion?

“A. That I cannot recall. [186]

“Q. Do you recall plaintiff's allegations in said motion with respect to defendant's financial net worth?

“A. My recollection is that it was a huge amount based upon the ‘war baby’ business in which the defendant was at that time engaged.

“Q. Do you recall whether the amount of the net worth of the defendant alleged by the plaintiff was in excess of \$100,000.00?

“A. I am pretty sure it was.

“Q. Do you recall the allegation in the affidavit and the complaint in the aforementioned action with respect to the defendant's annual income?

“A. I do not.

“Q. Would you recall whether the charge was made there that the defendant's annual income was in excess of \$15,000 per annum?

“A. I think it was.

“Q. Do you recall whether the complaint in the said action was verified on August 4th, 1942?

“A. I cannot recall.

“Q. When were you retained by Mr. Woynicz?

“A. I believe it was in the month of August, 1942. [187]

(Deposition of J. Charles Zimmerman.)

“Q. I show you a notice of appearance in said action, signed by Zimmerman & Simon, and ask you whether, after referring to said notice of appearance, you can tell us about when you were retained?

“A. This notice is dated August 14, 1942, and it was, therefore, to the best of my recollection, in August prior to that date.

“Q. Do you recall who recommended Mr. Woynicz to you? A. Mr. Louis Rosenberg.

“Q. And what did Mr. Woynicz say to you at the time he retained you? Anything with respect to a matrimonial litigation or matrimonial troubles in which you had theretofore represented Mr. Rosenberg?

“A. I do not recall any reference by Mr. Woynicz to Mr. Rosenberg's matrimonial differences.

“Q. Did Mr. Woynicz, at the time he retained you, submit to you a letter written to him by Jack Klaw, dated July 21st, 1942?

“A. I do not recall.

“Q. Do you recall whether he told you at the time that he retained you whether, after receipt of a letter by him from Jack Klaw, he telephoned Jack [188] Klaw and offered to enter into a separation agreement under which he was to pay the plaintiff \$20 per week for her maintenance and support?

“A. I do not recall the details, except that I know that he told me that he was negotiating with

(Deposition of J. Charles Zimmerman.)

his wife's lawyer, Mr. Klaw, at the time that he first came to the office.

“Q. Do you recall whether he also told you, at the time he first retained you, that after he had been served with a copy of the Summons and Complaint and the Notice of Motion in the previously mentioned separation action, that he had consulted with an attorney, Charles Ray Smith, of 280 Broadway, New York City, with respect to said Summons and Complaint and Motion?

“A. I recall that he told me that he consulted with another attorney. I now remember, when you mention the name, that it was a man named Smith, and Mr. Woynicz said that Mr. Smith did not engage in matrimonial litigation, and therefore he wanted me to step into the case.

“Q. Do you recall whether Mr. Woynicz told you that Charles Ray Smith was the attorney for the New York Thread Grinding Corporation at the time, of which Mr. Woynicz was a stockholder and officer? [189] A. I do not recall that.

“Q. Do you recall whether Mr. Woynicz informed you at the time that he authorized Mr. Smith to telephone Jack Klaw and advise him that Mr. Woynicz was willing to enter into a separation agreement wherein he would agree to pay to the plaintiff \$30 per week for her support and maintenance?

“A. I remember that Mr. Woynicz told me that

(Deposition of J. Charles Zimmerman.)

Mr. Smith had been communicating with his wife's lawyer, Mr. Klaw. The details I do not recall.

“Q. On the same date that he retained you, did you read the affidavit and Notice of Motion as well as the Summons and Complaint that had theretofore been served upon him?

“A. I read them, but I cannot say whether it was the same day.

“Q. After you read them, did you discuss with the defendant his annual net worth and annual income? A. I did.

“Q. And what, if anything, did the defendant state with respect to such matters?

“A. I think I told you, Mr. Klaw, that I do not want to disclose any confidential discussions, [190] unless Mr. Woynicz consents thereto. I have no interest in the outcome of the present litigation, but I do want to maintain the ethical standards that would be required of me, and if you have Mr. Woynicz's consent to my disclosure of his financial standing, then I would gladly do so, otherwise I must ask you to excuse me.

“Q. After you read the Notice of Motion and Summons and Complaint in the separation action, did you discuss with the defendant his financial net worth and his annual income?

“A. I did.

“Q. Did you discuss with Mr. Woynicz the charges of non-support made by the plaintiff in the said action? A. I did.

(Deposition of J. Charles Zimmerman.)

“Q. And, as a result of your discussions with Mr. Woynicz, do you recall having a conference with Jack Klaw at his office on August 17, 1942, pertaining to a proposed settlement of the separation action and a separation agreement to be entered into between Mr. Woynicz and his wife?

“A. I do not recall the time, but I do recall having conferences with Mr. Klaw at his office.

“Q. Do you recall that in that conversation Jack Klaw told you that the least the plaintiff would accept in settlement was a separation agreement wherein Mr. Woynicz would agree to pay his wife, the plaintiff, the sum of \$75 per week for her maintenance and support, and a conveyance to her of the premises at 2929 Wellman Avenue, Bronx, New York, and the lots adjoining said property.

“A. I recall that Mr. Klaw wanted more than was finally agreed upon. The exact figure I cannot recall, and I do not have any memorandum of it to show the figure. I also recall that Mr. Klaw wanted the property referred to in the question.

“Q. Did you thereafter relate to Mr. Woynicz the substance of those discussions you had with Mr. Klaw on August 17, 1942? A. I did.

“Q. Do you recall whether he understood your statements relating to the substance of that conversation at that time? A. He did.

“Q. Do you recall whether or not at that time, after you had related to Mr. Woynicz the discus-

(Deposition of J. Charles Zimmerman.)

sions you had with Mr. Klaw on August 17th, 1942, he authorized you to make a counter-proposition on his [192] behalf, the substance of which was that he would be willing to pay to his wife the sum of \$50 per week for her maintenance and support, and in lieu thereof, convey to her the fee of the aforementioned premises at 2929 Wellman Avenue, Bronx; was willing to give her a life interest in said property with remainder to the children? A. Yes.

“Q. At the time he authorized you to make this counter-proposition, did you explain to Mr. Woynicz the obligations he was undertaking if that proposition was accepted by his wife?

“A. Yes.

“Q. And di Mr. Woynicz fully understand that obligation? A. He did.

“Q. Did you thereafter have further discussions with Mr. Klaw on August 19th, 1942, August 20th, 1942, and August 21st, 1942, with respect to a proposed settlement of the action and a separation agreement?

“A. The exact dates I cannot recall, and I have no memorandum of them, but I did have continued conferences by phone with Mr. Klaw.

“Q. On August 28th, 1942, did you receive [193] from Jack Klaw the copy of a proposed separation agreement which was prepared by him, to be entered into between Mr. Woynicz and his wife?

“A. I received a letter from Mr. Klaw, dated

(Deposition of J. Charles Zimmerman.)

August 28th, 1942, and with which I received a proposed separation agreement.

“Q. After you received this proposed agreement from Mr. Klaw, did you have any conferences with Mr. Woynicz with respect thereto?

“A. I did.

“Q. Did Mr. Woynicz read that proposed agreement in your presence? A. He did.

“Q. And did Mr. Woynicz evidence understanding of the terms of that proposed agreement?

“A. He understood it.

“Q. Do you still have a copy of that proposed agreement? A. I have.

“Q. Does that proposed separation agreement contain any provision for the return of any tools to Mr. Woynicz?

“A. I do not see anything in the agreement to that effect, except that on my copy of the agreement there is a penciled memorandum in my own handwriting [194] with the following words: ‘Books, wearing apparel, tools in garage.’ These were additions that Mr. Woynicz suggested after he had read the agreement.

“Q. Can you tell us whether that proposed agreement makes any provision for the termination of the weekly payments to Mrs. Woynicz on the death of Mr. Woynicz?

“A. I do not see any in here, but I do see a memorandum in my own handwriting which reads as follows: ‘While both parties hereto shall re-

(Deposition of J. Charles Zimmerman.)

main alive, and so long as the second party shall keep, etc.' This was a memorandum made by me pursuant to Mr. Woynicz's request for a change in that proposed agreement.

"Q. Did you thereafter have further conferences with Mr. Klaw on September 1st, September 2nd and September 9th, 1942, with respect to the changes desired by Mr. Woynicz in the proposed separation agreement that Mr. Klaw had submitted to you previously?

"A. Yes, except that I cannot recall the dates exactly.

"Q. Did Mr. Klaw thereafter, on September 17th, 1942, deliver to you another proposed [195] separation agreement?

"A. I have a letter from Mr. Klaw, dated September 17th, 1942, with which another proposed separation agreement was enclosed.

"Q. I show you a photostatic copy of an agreement between Leonard Woynicz Sianozecki, the defendant, and his wife, Alexandra Woynicz Sianozecki dated September 22nd, 1942, signed by the respective parties thereto, and ask you whether this photostatic copy is an exact copy of the proposed separation agreement which you received from Jack Klaw on September 17th, 1942, with the following exceptions, namely: That on Page marked '1' thereof the date on the first line thereof was blank, and that on Page marked '4' thereof the matter now which appears to have been stricken out was

(Deposition of J. Charles Zimmerman.)

not so stricken out and the initials 'L.W.S.' and 'A.W.S.' did not appear on said Page '4,' and that on Page marked '7' thereof the interlineations, corrections and initials did not appear thereon, and on page marked '8' thereof the date now appearing thereon was left blank and there were no signatures, and on Page marked '9' thereof the places for the dates in the acknowledgments were blank and the signatures of Jack Klaw and Joseph L. [196] Simon on the stamped matter appearing respectively under their respective signatures were not there?

"A. Whether or not this photostat copy is an exact copy of your proposed agreement that was sent to me with your letter of September 17th, 1942, except for the changes you mentioned, I cannot say, because I do not recall whether, between the 22nd of September, 1942, and the 17th of September, 1942, there were any other drafts or proposed agreements between us; but I can tell you that this agreement which you now show me, dated September 22nd, 1942, was the agreement which was read by Mr. Woynicz prior to its execution, and discussed between him and me paragraph by paragraph before it was signed by him.

"Mr. Klaw: I offer in evidence the photostat copy of the agreement between plaintiff and defendant, dated September 22, 1942, and ask that it be marked in evidence as Plaintiff's Exhibit I for Identification.

"Notary: So mark it.

(Deposition of J. Charles Zimmerman.)

(The document was then marked as Plaintiff's Exhibit I for Identification, and initialed.)

"Q. I show you Plaintiff's Exhibit I for Identification, and ask you whether the defendant signed it in your presence.

"A. Yes, he did.

"Q. Before the defendant signed Plaintiff's Exhibit I for Identification, did he have any discussions with you with respect to a clause which appeared on Page '4' thereof, but which was stricken out before it was signed by the parties thereto?

"A. Yes, that was one of the things that he objected to.

"Q. At the time that you saw the defendant sign Plaintiff's Exhibit I for Identification, was Mrs. Woynicz's signature on it?

"A. I do not think so. I think I went to Mr. Klaw's office and Mrs. Woynicz signed it there in my presence.

"Q. Did you also prepare a Deed in accordance with the provisions contained in Paragraph 11 of Plaintiff's Exhibit I for Identification, which Deed was signed by the defendant in your presence?

"A. I did prepare the Deed and, to the best of my recollection, the agreement was signed at the same time.

"Q. Did the defendant read the Deed so prepared by you before he signed it? [198]

(Deposition of J. Charles Zimmerman.)

“A. Yes.

“Q. Did the defendant ever tell you that he wanted the Deed and the separation agreement to provide that the Wife was only to have a life interest in only one of the apartments in the premises described in Plaintiff’s Exhibit I for Identification, and that one of his sons, who was in the Army at the time, should have the right to occupy another apartment on the premises upon his discharge from the Army?

“A. No. To the contrary, Mrs. Woynicz was to have the entire house and get all the income and pay all the taxes until her death and then it was to go to the children.

“Q. Do you recollect whether you, at any time, said anything which might lead Mr. Woynicz to reasonably believe that the separation agreement which is marked as Plaintiff’s Exhibit I for Identification, and the Deed executed by Mr. Woynicz in accordance with the provisions thereof, contained any provision that his wife was to receive a life interest only in one of the apartments in the premises described in said agreement and Deed, and that his son who was in the Army would have a right to occupy the other apartment in said premises [199] upon his return from the Army?

“A. I did not.

“Q. Do you recollect whether you ever told Mr. Woynicz, either in the following words or words to

(Deposition of J. Charles Zimmerman.)

that effect, "Don't go to Court, because you will get the same treatment like Moscow trials"?

"A. I did not.

"Q. Did you ever say anything to Mr. Woynicz which might reasonably lead him to believe that he could not have as witnesses people who were in his employ or people who were employees of the corporation with which Mr. Woynicz was connected because no jury would accept testimony from such people despite they were willing to testify to the truth? A. I did not.

"Q. Did you ever say anything to Mr. Woynicz that would reasonably lead him to believe that, in the event that he desired to defend the separation action, that the only witness you would accept was his daughter, provided his daughter would write for you something in her own handwriting and sign the same? A. I did not.

"Q. Did Mr. Woynicz ever tell you that if the trial had to be like a Moscow trial, then 'let [200] it be a Moscow trial'?

"A. I do not recollect ever hearing the words 'Moscow' or 'Moscow trial' used by either one of us.

"Q. After discussing with Mr. Woynicz the allegations contained in the Summons and Complaint and the Motion papers for alimony and counsel fees in the separation action, do you recollect whether Mr. Woynicz asked you to try to work out an agreement with his wife's attorney? A. He did.

(Deposition of J. Charles Zimmerman.)

“Q. Between the time the defendant retained you and the date of the signing by him of Plaintiff’s Exhibit I for Identification, how many conferences did you have with the defendant?

“A. A minimum of a dozen.

“Q. Was Joseph L. Simon present at some of these conferences that you had with Mr. Woynicz?

“A. I do not recall. Some were had at my office and some were had at his place of business.

“Q. Do you know whether the defendant was able to read English? A. He was.

“Q. Did the defendant ever write any letters to you in the English language? [201]

“A. He did. One on December 4th and one on December 10th, 1942.

“Q. Will you please let me have these letters so that I can mark them in evidence as exhibits?

“A. I do not wish to give up any part of my files. These letters refer to the fee arrangement between Mr. Woynicz and myself. If you want them read into the record, I will read them.

“Q. Did you ever say anything to Mr. Woynicz to the effect that if he defended the separation action and lost it, that everything would be taken from him? A. I did not.

“Q. Did the defendant tell you that he wanted to oppose the motion for temporary alimony?

“A. If he could not make a better settlement, he wanted it opposed.

(Deposition of J. Charles Zimmerman.)

“Q. Did he tell you that he did not want to make any settlement of any nature? A. He did not.

“Q. Did he tell you that he wanted to contest the action brought by his wife and not to enter into any negotiations for a settlement?

“A. No, he did not. He wanted a settlement if it it could be made at better terms than those which his wife asked for in her suit.

“Q. Did you keep the defendant informed of the negotiations you were having with Mr. Klaw with respect to a settlement of the separation action and proposed separation agreements?

“A. I did.

“Q. Did Mr. Woynicz tell you that he did not want a separation, but wanted you to effect a reconciliation of the parties? A. No.

“Q. Did you insist on Mr. Woynicz’ signing the separation agreement? A. I did not.

“Did you ever tell him, either in substance or in words, that if he went to court he would be sunk?

“A. I did not.

“Q. Did you ever tell Mr. Woynicz that you wanted him to sign the agreement as soon as possible, and that he would be a better man if he lived separate and apart from his wife and signed Plaintiff’s Exhibit I for Identification?

“A. I did not.

“Q. Did you ever tell Mr. Woynicz or say [203] anything to him which would reasonably lead him to believe that, regardless of any defense that he

(Deposition of J. Charles Zimmerman.)

might interpose in the separation action, that he would lose the action? A. I did not.

“Q. Did you ever tell him that ‘you have no legs to stand on in the Court’? A. No.

“Q. Did Mr. Woynicz make any request from you to limit the period of the payments that he would be required to make to his wife under the separation agreement marked in evidence as Plaintiff’s Exhibit I for Identification, other than those contained in the agreement?

“A. He asked me if they could be limited, and I replied that if he entered into a separation agreement, it would be for as long as their lives or for the period shortened by the terms of the agreement.

The Court: We will recess now until 2:00 o’clock.

(Whereupon, at 11:55 o’clock a.m., a recess was taken until 2:00 o’clock p.m. of the same day.) [204]

The Court: Proceed.

Mr. Riseley: Continuing with the deposition of J. Charles Zimmerman:

(Continuing reading)

“Did you always converse with Mr. Woynicz in the English language? A. Always.

“Q. Were you able to understand him?

“A. Yes.

“Q. Was Mr. Woynicz able to understand everything that you said to him? A. Yes.

(Deposition of J. Charles Zimmerman.)

“Q. Did you ever say anything to Mr. Woynicz that could reasonably lead him to believe that the Plaintiff’s Exhibit I for Identification that he was signing merely some papers to obtain the dismissal of the action which had been brought against him by his wife?

“A. No, I did not. Mr. Woynicz understood distinctly that this was a separation agreement which was to last for the full period of their lives, as provided for in the agreement.

“Q. Do you recollect whether at any time when you discussed the matter of the separation agreement [205] with Mr. Woynicz, whether Mr. Woynicz was afflicted with a muscular trembling which caused disturbances in his speech?

“A. I recall nothing of the kind.

“Q. Was Mr. Woynicz subject to any unusual lapses of memory?

“A. Not that I could observe at all.

“Q. Were Mr. Woynicz’ actions and speech in your presence rational or irrational?

“A. Rational.

“Q. After Plaintiff’s Exhibit I for Identification was signed by the defendant, did you have occasion to see the defendant or correspond with the defendant, or did the defendant correspond with you?

“A. I know that I communicated with Mr. Woynicz with reference to some details that were unfinished, such as his wife’s ring and some rent question, but I do not recall whether I saw Mr. Woynicz or

(Deposition of J. Charles Zimmerman.)

whether I talked with him by telephone only. I did have correspondence with him, and he wrote me the letters that I spoke of before.

“Q. Did Mr. Woynicz ever complain to you that the terms contained in Plaintiff’s Exhibit I for Identification and the Deed executed in accordance with the terms of that agreement did not reflect his understanding of the terms of said agreement?

“A. No.

“Q. At the time that Mr. Woynicz executed Plaintiff’s Exhibit I for Identification, did he deliver to you a check in the amount of \$350. made payable to the order of Jack Klaw as Attorney for the Plaintiff, to be delivered to Jack Klaw as counsel for the Plaintiff, as provided for in said Plaintiff’s Exhibit I for Identification? A. Yes.

“Q. And did Mr. Woynicz at the same time give you a check made payable to the order of the plaintiff in the sum of \$150. to cover the period under the said separation agreement commencing on August 23rd, 1942, and ending on September 26th, 1942?

“A. I think so. I do not have any distinct recollection of any such check, nor do I have any record of such in my files.

“Q. Did you say anything to Mr. Woynicz before he executed the Plaintiff’s Exhibit I for Identification which could reasonably lead him to believe that, if there was a change in his [207] financial condition after he had executed said Plaintiff’s

(Deposition of J. Charles Zimmerman.)

Exhibit I for Identification or a change in his earnings or earning capacity, that he would not have to make the weekly payments as required by said Plaintiff's Exhibit I for Identification?

"A. No; on the contrary, I pointed out to him that under the laws of this state that a separation agreement would be binding on both him and Mrs. Woynicz, so that neither one of them could change the agreement, whereas a decree of the Court fixing support and maintenance was subject to an application for an increase by his wife, as well as by a decrease by him, but that the Courts honored private separation agreements made between the parties for the life of the agreement.

"Q. Did Mr. Woynicz ever tell you that he had forgotten why he had come to see you?

"A. No.

"Q. Did Mr. Woynicz concentrate on the matters you discussed with him at all times?

"A. I never observed any lack of concentration on his part.

"Q. Did Mr. Woynicz ever tell you that he was under the care of a physician for mental disorders or for a disease of the mind? A. No.

"Interrogatories propounded to the witness by the Notary Public on behalf of the defendant, and his answers thereto:

"Interrogatory No. 1: During the time you represented the defendant in 1942, were you during all of that period engaged in the active practice of law

(Deposition of J. Charles Zimmerman.)

to the exclusion of other pursuits? A. Yes.

“Interrogatory No. 2: During the time you represented the defendant in 1942, were you, during any portion of that period, a judge, justice, or other official functionary of any court, including courts not of record? A. Yes.

“Interrogatory No. 3: If so, what was your office, duties, time expended per week in those duties, and over what period of time did you serve?

“A. I was Judge of the City Court, entailing as much time as was necessary from day to day.

“Interrogatory No. 4: During the period you represented the defendant, or during any portion of it, were you engaged in a real estate business? [209]

“A. No.

“Interrogatory No. 5: If so, over what period of time were you so engaged and how much time per week did you devote to that pursuit?

“A. No answer.

“Interrogatory No. 6: During the period you represented the defendant, or during any portion of that period, were you engaged in any way in the activity of real estate management, either for yourself or for others? A. No.

“Interrogatory No. 7: If so, describe the nature and extent of your duties, the nature and number of the units managed or supervised, and how much time per week was devoted to those pursuits?

“A. No answer.

(Deposition of J. Charles Zimmerman.)

“Interrogatory No. 8: Do you recall whether or not Mr. Leonard Woynicz ever complained to you of severe headaches when he was in your office during 1942? A. He did not.

“Interrogatory No. 9: Do you recall whether or not when Mr. Woynicz was in your office as a client, the conferences were interrupted by telephone [210] calls from painters, plumbers, and coal delivermen at any times, and if so, about how many of such interruptions were there?

“A. No more than any other lawyer would be interrupted by business calls.

“Interrogatory No. 10: Have you ever been a partner of, or associated in any way with one Louis Rosenberg?

“A. About 15 years ago, I had one business dealing with Mr. Rosenberg.

“Interrogatory No. 11: If so, what was the nature of your relationship with Rosenberg, in what sort of activity were you engaged, and over what period of time, and how much time per week did you spend in such activity?

“A. He was a garage broker and we had a garage deal together. That was over long before I met Mr. Woynicz.

“Interrogatory No. 12: On one occasion, in your office, in 1942, during the pendency of the separate maintenance action, did you say to Mr. Woynicz,

(Deposition of J. Charles Zimmerman.)

'Robbers. Robbers. Painters, robbers. Plumbers, robbers. Coal deliverymen, robbers'?

"A. No. [211]

"Interrogatory No. 13: do your recall that Mr. Woynicz in your office in the summer of 1942 told you that he was so desperate that he didn't know what to do? A. No.

"Interrogatory No. 14: Did Mr. Woynicz ever discuss, during the summer of 1942, the possibilities of suicide with you? A. No.

"Interrogatory No. 15: Do you recall that there were times, during the period that you represented Mr. Woynicz, that he could not understand what you were saying to him? A. No.

"Interrogatory No. 16: Did not Mr. Woynicz have great difficulty in understanding what you were trying to explain to him at times? A. No.

"Interrogatory No. 17: Do you recall any occasion when Mr. Woynicz was unable to make you understand what he was saying? A. No.

"Interrogatory No. 18: If so, please relate them, and tell whether it appeared to you that the difficulty was caused by nervousness, describing [212] Mr. Woynicz's outward manifestations as you saw them at the time. A. No answer.

"Interrogatory No. 19: So far as you could observe and hear, was Mr. Woynicz suffering from

(Deposition of J. Charles Zimmerman.)

difficulties of speech during the time you represented him? A. No.

“Interrogatory No. 20: If any of your conversations with Mr. Woynicz, did he ever say anything to you about the Moscow Trials? A. No.

Interrogatory No. 21: If so, please relate the substance of all the conversations so far as the Moscow Trials were involved. A. No answer.

“Interrogatory No. 22: Did Mr. Woynicz ever exhibit to you any unusual outward manifestations such as trembling, fear, anger, tears, depression, distorted facial expressions, or otherwise, and if so, describe them, and tell when and where.

“A. No.

“Interrogatory No. 23: Do you recall whether Mr. Woynicz ever complained to you of his health, during the time you represented him, and if so, [213] what complaints did he make and when were they made, and how many did he make?

“A. I have a faint recollection of his saying that he had an abdominal operation sometime prior to the time he came to my office.

“Interrogatory No. 24: Do you recall whether Mr. Woynicz ever talked excessively to you about the Moscow trials? A. He did not.

“Interrogatory No. 25: During the time you represented Mr. Woynicz, do you recall whether his

(Deposition of J. Charles Zimmerman.)

hands would at times shake when he talked or listened to you? A. They did not.

“Interrogatory No. 26: Did you ever at any time say anything to Mr. Woynicz from which he reasonably could have understood that he would be allowed only one witness on his behalf, his daughter Wanda, and then only if she would put everything in her own handwriting and sign it? A. No.

“Interrogatory No. 27: Did you ever at any time say anything to Mr. Woynicz from which he reasonably could have understood that none of his friends, partners, or employees would be allowed [214] to testify on his behalf at the trial of the then pending separation action? A. No.

“Interrogatory No. 28: Did you ever at any time say anything to Mr. Woynicz from which he could have reasonably understood that trials in the State of New York were not fairly conducted?

“A. No.

“Interrogatory No. 29: Did you ever at any time say anything to Mr. Woynicz from which he could have reasonably understood that trials in the State of New York were conducted like the Moscow trials?

“A. No.

“Interrogatory No. 30: Did you ever at any time say anything to Mr. Woynicz from which he could have reasonably understood that a jury sitting in a trial court in the State of New York would not

(Deposition of J. Charles Zimmerman.)

believe an honest witness who was telling the truth?

“A. No

“Interrogatory No. 31: Did you ever at any time say anything to Mr. Woynicz from which he could have reasonably understood that you were promising to pay him \$400 or any amount whatever?

“A. No. [215]

“Interrogatory No. 32: Did you ever at any time say anything to Mr. Woynicz from which he might reasonably have understood that the girl, Mary, who was named in the separation action, and/or her parents would not be allowed to testify as to the innocent nature of Mary’s friendship with him?

“A. No.

“Interrogatory No. 33: Did you ever at any time say anything to Mr. Woynicz from which he might have reasonably understood that testimony to the effect that Mary was the girl friend of his son Robert would not be allowed in court? A. No.

“Interrogatory No. 34: Has there ever been any disagreement between you and Mr. Woynicz over fees? If so, what?

“A. He refused to pay me the balance of \$100, claiming that the amount he paid me was the amount agreed upon. I did nothing after he refused to pay this sum.

“Interrogatory No. 35: Did you ever observe that Mr. Woynicz had trouble remembering things?

“A. No.

(Deposition of J. Charles Zimmerman.)

“Interrogatory No. 36: Did you ever have to refresh the memory of Mr. Woynicz? [216]

“A. No.

“Interrogatory No. 37: Did you ever characterize the work in which Mr. Woynicz was engaged as ‘trying work’ which would make it possible for events to escape his memory? A. No.

“/s/ J. CHARLES ZIMMERMAN.

“Witness:

“MILTON POPPER,

“Notary Public.”

The notary public’s certification follows. I don’t have the date on my copy.

This is the deposition of Joseph L. Simon in this action:

“The depositions of Joseph L. Simon of 60 East 42nd Street, New York City, State of New York, and Jack Klaw of 521 Fifth Avenue, New York City, State of New York, were taken before me, a notary public in and for the County of New York, State of New York, on the 17th day of November, 1949, at Room 1801, 521 Fifth Avenue, in the County of New York, pursuant to the annexed notice and the annexed stipulation, on behalf of the plaintiff in the above-entitled action pending in the above-named Court.

“Jack Klaw, Esq., of 521 Fifth Avenue, [217]

New York City, State of New York, appeared as attorney for the plaintiff, and after waiting until 11 A.M., no one appeared as attorney for the defendant. Written interrogatories under Rule 30(c) FRCP to be propounded to the aforesaid witnesses by the officer taking the deposition under the aforesaid notices, were delivered to me, copies of which are hereto annexed.

DEPOSITION OF
"JOSEPH L. SIMON

"being by me first duly sworn to tell the whole truth as hereinafter certified, testified as follows:

"Direct Examination

"By Mr. Klaw:

"Q. What is your full name?

"A. Joseph Lewis Simon.

"Q. And your residence?

"A. I live at 200 Haven Avenue, New York 33, N. Y.

"Q. You are an attorney admitted to practice in the Courts of the State of New York?

"A. I am.

"Q. How long have you been so admitted?

"A. I was admitted in May, 1938.

"Q. Where do you maintain your law office?

"A. At 60 East 42nd Street, New York City, New York.

"Q. Do you know the defendant in this action, Leonard Woynicz, also known as Leonard Woynicz Sianozecki?

(Deposition of Joseph L. Simon.)

“A. I have met him on several occasions.

“Q. During the year 1942, were you associated with J. Charles Zimmerman in the practice of law under the firm name of Zimmerman & Simon at 17 East 42nd Street, in the Borough of Manhattan?

“A. I was.

“Q. Was it in connection with your association with Mr. Zimmerman that you met the defendant?

“A. It was.

“Q. Do you recall about when you met the defendant herein for the first time?

“A. Some time in the summer of 1942.

“Q. Were you present during the conversation between the defendant and Mr. Zimmerman when the defendant retained your firm to represent him in connection with an action which had then been instituted by the defendant's wife in the Supreme Court, Bronx County, which action sought a separation together with alimony and counsel fees.

“A. I was present when the defendant came to the office but I do not believe that I was present during the conversation which took place between him and Mr. Zimmerman on that occasion

“Q. Were you present at any conversations between the defendant and Mr. Zimmerman?

“A. I was present on several occasions in which the defendant and Mr. Zimmerman discussed the action brought by the defendant's wife against him in the Supreme Court, Bronx County, for separation.

“Q. I show you an agreement dated September

(Deposition of Joseph L. Simon.)

22, 1942, between Alexandra Woynicz Sianozecki, and Leonard Woynicz Sianozecki, and ask you whether the signature of Joseph L. Simon appearing on page 9 thereof as notary, is your signature.

“A. It is.

“Q. I show you this photostat copy of the executed agreement which I have just referred to and ask you whether it is in all details an exact copy thereof. A. Yes.

“Mr. Klaw: I will ask that the photostat copy of the agreement between plaintiff and defendant dated September 22, 1942, be marked as [220] Plaintiff's Exhibit 1 for Identification.

“(The notary then marked the document as Plaintiff's Exhibit 1 for Identification and initialed it.)

“Q. Did you sign your name to this agreement, marked Plaintiff's Exhibit 1 for Identification, as notary public acknowledging the signature of Leonard Woynicz Sianozecki to that agreement?

“A. I did.

“Q. And did Mr. Sianozecki sign this agreement in your presence? A. He did.

“Q. Did Mr. Sianozecki sign his name to this agreement and did you sign your name as notary public to this agreement on September 22, 1942?

“A. Yes.

“Q. At the time this agreement was so signed by the defendant, did his wife's signature appear in the agreement?

(Deposition of Joseph L. Simon.)

“A. In answer to your question, may I say that I have refreshed my recollection by reference to correspondence in the files of Zimmerman & Simon which confirms my recollection that Mrs. Woynicz Sianozecki’s signature was not placed upon the instrument until a later date.

“Q. Were the conversations that you had with the defendant, referred to by you heretofore, had before the signing of Plaintiff’s Exhibit 1 for Identification? A. Yes.

“Q. Can you tell us with respect to what matters in particular these conversations were had?

“A. I participated in the drafting of Exhibit 1 herein for identification and took part in several conversations concerning the terms thereof with Mr. Zimmerman and the defendant and I particularly remember being present at discussions which dealt with the amount of alimony to be paid under the agreement and the disposal of the real property referred to in the agreement.

“Q. Do you recall how many conferences you had with the defendant and conferences the defendant had with Mr. Zimmerman at which you were present, prior to the signing of the agreement marked Plaintiff’s Exhibit 1 for Identification, by the defendant?

“A. To the best of my recollection, I never had a conversation with the defendant at which Mr. Zimmerman was not present and I believe that I took part in two, three or possibly four conversa-

(Deposition of Joseph L. Simon.)

tions on different dates, at which the three of us were [222] present.

“Q. Do you recall whether prior to the defendant’s execution of Plaintiff’s Exhibit 1 for Identification herein, any proposed separation agreements were prepared by you or submitted to you by Jack Klaw who was then Mrs. Woynicz’s attorney?

“A. In answer to this question, I have refreshed my recollection from the files and I may say that a proposed agreement was submitted to the firm by Mr. Klaw, and we, in turn, prepared a separation agreement which was submitted to Mr. Klaw.

“Q. Did these prior conversations that the defendant had with Mr. Zimmerman in your presence relate to the proposed terms in the separation agreements? A. In part.

“Q. Do you recall whether there was a discussion between the defendant and Mr. Zimmerman relating to the custody, control and education of the son, Robert?

“A. I recall that the defendant was very much concerned about his children’s welfare and I recall being present on at least one conversation in which provision concerning these matters was discussed between Mr. Zimmerman and the defendant.

“Q. Do you recall whether the defendant insisted that the separation agreement contain a provision that he shall have the sole custody, control and education of Robert and that he would assume responsibility and liability for Robert’s adequate

(Deposition of Joseph L. Simon.)

support, maintenance and education consistent with his financial means, environment and mode of living?

“A. He was very insistent on these provisions.

“Q. Do you recall whether there were any conversations between the defendant and Mr. Zimmerman relating to the amount of weekly support the defendant would agree to pay to his wife under the separation agreement?

“A. Yes, I do. There were such conversations and the final amount which he agreed to pay was one which was reached after a considerable amount of discussion between Mr. Zimmerman and the defendant and a considerable amount of bargaining back and forth with Mr. Klaw. At some of these discussions, I was present.

“Q. During any of these conversations in which you were present, did the defendant and Mr. Zimmerman discuss the question of conveying to the defendant's [224] wife a life interest in premises 2929 Wellman Avenue, Bronx?

“A. I am not sure about the address but I was present at such conversations insofar as they were related to conveying the property described in this agreement and if that is the address of the property described in the agreement, then the answer to the question is yes.

“Q. Did the defendant speak in the English language to you or to Mr. Zimmerman on the occasions he spoke to you or on the occasions he spoke to Mr. Zimmerman in your presence?

(Deposition of Joseph L. Simon.)

“A. All conversations took place in English.

“Q. Did the defendant read the agreement marked Plaintiff’s Exhibit 1 for Identification herein before signing it?

“A. I don’t recall whether he read it. I know that Mr. Zimmerman explained and read each paragraph to him in my presence. This was Mr. Zimmerman’s usual practice with all of his clients.

“Q. During these conversations, do you recall whether the answers by the defendant to questions propounded to him by Mr. Zimmerman were responsive at all times?

“A. The defendant’s English was not wholly fluent and any questions to which he did not give a responsive answer, he communicated his lack of understanding and the question was rephrased so that he would understand it.

“Q. Did the acts and conversations of the defendant in your presence impress you at the time as being rational or irrational?

“A. Rational.

“Q. Did Mr. Zimmerman explain to the defendant in detail in your presence, each of the terms contained in Plaintiff’s Exhibit 1 for Identification, before the defendant signed it?

“A. That is my recollection.

“Q. Do you recall whether the defendant understood the terms of Plaintiff’s Exhibit 1 for Identification after Mr. Zimmerman explained them to him?

(Deposition of Joseph L. Simon.)

“A. His participation and responses and questions concerning the agreement demonstrated to me that he understood.

“Q. Did you ever hear the defendant tell Mr. Zimmerman that he preferred to litigate the action commenced by his wife for separation and whether Mr. Zimmerman said to him ‘Don’t go to Court because you will get the same treatment like [226] Moscow trials’ or words to that effect?

A. No, definitely not.

“Q. Did you ever hear Mr. Zimmerman tell the defendant that he could not bring his witnesses to any trial that might be had in the separation action then pending between the defendant and his wife, if the witnesses were receiving salaries or being paid by the defendant or the defendant’s firm?

“A. No.

“Q. Did you ever hear Mr. Zimmerman tell the defendant that no jury would take the testimony from such witnesses brought by the defendant to any trial? A. No.

“Q. Did you ever hear Mr. Zimmerman tell the defendant that if he went to trial in the action that everything would be taken from him?

“A. No.

“Q. Did you ever hear the defendant tell Mr. Zimmerman that he wanted him to effect a reconciliation between the parties? A. No.

“Q. Did you ever hear Mr. Zimmerman tell the defendant that if he went to Court to litigate [227]

(Deposition of Joseph L. Simon.)

the separation action that was brought against him that he would be sunk?

“A. My recollection is that Mr. Zimmerman advised the defendant that he would probably not succeed in his defense of the separation action.

“Q. During the conversations between Mr. Zimmerman and the defendant in your presence, or in his conversations with you, did the defendant appear frightened? A. Definitely not.

“Q. Was the defendant attentive in the conversations between him and Mr. Zimmerman and the conversations with you? A. Intensely so.

“Q. Did the defendant ever tell you or Mr. Zimmerman in your presence of any physical or mental illness or discuss his health?

“A. None whatever.

“Q. Do you recall his physical appearance during the times that you saw him? A. Yes.

“Q. Do you recall whether he was afflicted with any muscular trembling?

“A. I recall that he was not.

“Q. Do you recall whether his hands shook?

“A. They did not.

“Q. Was he subject to any unusual lapses of memory in your presence?

“A. Not about matters which were discussed in my presence.

“Q. Do you recall whether the defendant clearly understood at the time of his execution of Plaintiff's Exhibit I for Identification that he was not

(Deposition of Joseph L. Simon.)

merely signing a paper which would result in a discontinuance of the separation action brought against him by his wife, but that he was undertaking a lifelong obligation to pay his wife \$50.00 per week and conveying to her a life interest in the real property referred to in Plaintiff's Exhibit 1 for Identification?

"A. He gave every evidence of such understanding.

"Q. Do you recall whether the defendant ever stated that the tools referred to in Plaintiff's Exhibit 1 for Identification belonged to his son Robert?

"A. No.

"Q. Do you recall whether the defendant read the deed conveying a life interest in premises 2929 Wellman Avenue to the plaintiff in accordance with [229] the provisions of Plaintiff's Exhibit 1 for Identification before signing same?

"A. Yes, he read it.

"Q. Did you also read the deed to him?

"A. I did not. I believe Mr. Zimmerman did.

"Q. Did the defendant ever tell you or Mr. Zimmerman in your presence who referred him to your firm?

"A. Yes, he was referred to our firm by one of Mr. Zimmerman's clients who was associated with Mr. Woynicz in business and Mr. Zimmerman had just finished handling a matrimonial matter for such client which was concluded by the execution of a separation agreement between the parties thereto.

(Deposition of Joseph L. Simon.)

Mr. Woynicz wanted his matter handled in a similar fashion.

“Q. Do you know whether at the time the defendant executed Plaintiff’s Exhibit 1 for Identification he freely executed the same and consented to be bound by the terms thereof?

“A. He understood the terms and he voluntarily signed the agreement and knew what his obligations were under it.

“Q. Did Mr. Woynicz ever exhibit in your presence any unusual outward manifestations such as trembling, [230] fear, anger, tears, depression or distorted facial expressions? A. No.

“Q. Did you ever hear Mr. Zimmerman tell Mr. Woynicz anything from which he could reasonably understand that trials in the State of New York were conducted like Moscow trials?

“A. No.

“Q. Did you ever at any time hear Mr. Zimmerman say anything to Mr. Woynicz from which he could have reasonably understood that a trial Court or a jury sitting in a trial Court in the State of New York, would not believe any of his witnesses who was telling the truth? A. No.

“Q. Did you ever hear Mr. Zimmerman say anything to Mr. Woynicz from which he could reasonably have understood that the only witness that the defendant would be able to produce on the trial of the separation action was his daughter and that the

(Deposition of Joseph L. Simon.)

defendant should get the daughter to write in her own handwriting and sign a paper? A. No.

“Q. Did you ever hear Mr. Zimmerman say anything to Mr. Woynicz from which he could reasonably [231] have understood that under the terms of Plaintiff’s Exhibit 1 for Identification, and the deed conveying a life interest to defendant’s wife to the real property referred to in such agreement, that defendant’s wife was to have the right to one apartment only as long as she lived and that upon the return of his son from the Army service, the son would have the right to move into the premises conveyed by said deed? A. No.

“Interrogatories propounded to the witness on behalf of the defendant, and his answers thereto:

“Interrogatory No. 1: State what your relationship to J. Charles Zimmerman was in 1942, and what your relationship is to him now?

“A. In 1942, J. Charles Zimmerman and I were partners in the practice of law. We conducted our partnership under the name of Zimmerman & Simon at 17 East 42nd Street, New York 17, New York. At the present time, Mr. Zimmerman and I are not associated in any way whatsoever.

“Interrogatory No. 2: Have you discussed the testimony [232] which you are to give in this deposition with any persons and if so name the persons?

(Deposition of Joseph L. Simon.)

“A. I have discussed my testimony with no persons.

“Interrogatory No. 3: If you have ever seen the defendant in this action, please give a physical description of him as he was at the last time you saw him, and state when and where that was.

“A. My recollection is that the defendant at the time I last saw him, which I believe was on the date he signed the separation agreement marked herein as Plaintiff’s Exhibit 1 for Identification, or very shortly thereafter, at the office of Zimmerman & Simon, was a tall man, over six feet in height, fairly wide shouldered, giving the impression of substantial physical strength, rather square faced, clean shaven and having light brown hair.

“Interrogatory No. 4: If you are the Joseph L. Simon who notarized a separation agreement between plaintiff and defendant on September 22, 1942, I ask you whether or not at the time of the execution of that document, you heard the defendant Leonard Woynicz say anything about ‘Moscow Trials’?

“A. I am that Joseph L. Simon and I did not hear [233] any such statement.

“Interrogatory No. 5: Did you ever hear the defendant ever at any time mention Moscow Trial, or Moscow Trials, and if so, when, where and what did he say?

“A. I never heard any reference to Moscow Trial, or Moscow Trials from the defendant.

(Deposition of Joseph L. Simon.)

“Interrogatory No. 6: Did you ever hear the defendant complain about his state of health or headaches, and if so, when, where, and what did he say?

“A. I never heard the defendant complain about the state of his health or headaches.

“Interrogatory No. 7: Are you at present, or have you been in the past, a party to any agreements or arrangements of any kind whatever with Jack Klaw, and if so, when and what?

“A. I have never been a party to any arrangements or agreements with Jack Klaw. I have never handled any matter in the course of my practice other than the separation action involving the defendant and his wife, in which Mr. Klaw was in any way involved. I have never seen Mr. Klaw until today.

“Interrogatory No. 8: At the time the [234] defendant executed the agreement of September 22, 1942, how long were you in his presence or where you could observe him?

“A. I was in his presence where I could observe him during the entire time of his visit on that day to the office of Zimmerman & Simon. I do not recall the duration of that visit.

“Interrogatory No. 9: Do you have any interest in fees that might be due J. Charles Zimmerman?

“A. None whatsoever.

“Interrogatory No. 10: So far as you know, from your relationship to J. Charles Zimmerman,

(Deposition of Joseph L. Simon.)

if any, are any fees due Zimmerman from Defendant?

“A. I believe that none are due; I am not absolutely sure.

“Interrogatory No. 11: If you have testified to having overheard, or been present at any conversations whatever between Mr. Woynicz and Mr. Zimmerman, would you state, to the best of your recollection, the date of each such conversation, and between what times of day, and how long you were present, and whether, as to each conversation, you heard the entire conversation that took place, and whether you were actually in Mr. Woynicz' presence during [235] the entire time of each conversation to which you have testified.

“A. These conversations occurred more than seven years ago. They involved a matter in which Mr. Zimmerman was principally concerned rather than myself and over which he had complete charge. Entries concerning the dates of these conversations and all of visits of the defendant to our office were made in Mr. Zimmerman's personal diary and I made no entries concerning them in my own. I do not have access at the moment to Mr. Zimmerman's diary covering the period in question since he is engaged in the practice of law in another county. To the best of my recollection, however, these conversations took place at the offices of Zimmerman & Simon in the months of August and September of 1942. I was present at two, three or four of such

(Deposition of Joseph L. Simon.)

conversations and possibly more and I have no recollection whatsoever of the time of day or the exact dates upon which these conversations took place and could not refresh my recollection except by reference to the diary aforementioned. Furthermore, I am unable to say at this time whether in the conversations at which I was present, I was present at the whole or only at part of these conversations.

“Interrogatory No. 12: Did you ever at any time say anything to Mr. Woynicz, or hear anyone say anything to Mr. Woynicz from which he could reasonably have understood that trials in the State of New York were conducted like Moscow Trials?

“A. Certainly not.

“Interrogatory No. 13: Did you ever at any time say anything to Mr. Woynicz, or hear anyone say anything to Mr. Woynicz from which he could reasonably have understood that trials in the State of New York were not fairly conducted?

“A. Certainly not.

“Interrogatory No. 14: At the time of the execution of the agreement of September 22, 1942, was the agreement read to Mr. Woynicz? A. Yes.

“Interrogatory No. 15: Have you ever represented Mrs. Woynicz, or served her in any way whatever? A. Certainly not.

“Interrogatory No. 16: Would you describe Mr. Woynicz' manner of speech at times when you have heard him talk?

(Deposition of Joseph L. Simon.)

“A. I am not sure that I understand the question but if it asks what I think it does, Mr. [237] Woynicz speaks with a very strong Slavic accent in a deep tone and in fairly staccato fashion.

“Interrogatory No. 17: Did you ever have difficulty in understanding him?

“A. My ears happen to be attuned to the East European accent so that I never had any difficulty understanding him.

“Interrogatory No. 18: Did he ever repeat things he had just said, or speak in broken sentences? If so, describe.

“A. Speaking in broken sentences is a common habit of people who do not have a good command of the English language and I daresay that he did on occasion speak in broken sentences. I do not recall whether he ever repeated himself but it may well be that he did.

“Interrogatory No. 19: When in your presence, was Mr. Woynicz able to sit still and concentrate on what was going on, or was he restless, and apt to lose the trend of conversation, or apt to return to a subject which has been closed?

“A. I noticed no such traits on Mr. Woynicz's part.

“/s/ JOSEPH LEWIS SIMON.

“Witness:

“IRVING KLEIN,

“Notary Public.”

“DEPOSITION OF
“JACK KLAU

being by me first duly sworn to tell the whole truth
as hereinafter certified, testified as follows:

“Direct Examination

“By Mr. Klaw:

“Q. What is your full name?

“A. Jack Klaw.

“Q. And your residence?

“A. 2055 Anthony Avenue, Bronx, New York
City.

“Q. Are you an attorney admitted to practice
in the Courts of the State of New York?

“A. I am.

“Q. How long have you been so admitted and
practicing?

“A. Since 1929.

“Q. Where do you maintain your law office?

“A. At 521 Fifth Avenue, New York City, New
York.

“Q. Do you know the plaintiff in this action,
Alexandra Woynicz, also known as Alexandra Woy-
nicz Sianozecki? A. I do.

“Q. In 1942 did the plaintiff consult you with
reference to her husband, Leonard Woynicz? [239]

“A. Yes. She told me that her husband had
failed to furnish her with support and retained
me to communicate with her husband.

“Q. Did you thereafter communicate with her
husband?

(Deposition of Jack Klaw.)

“A. I did. On July 21st, 1942, I wrote him a letter.

“Q. Have you a copy of this letter?

“A. Yes.

“Mr. Klaw: I offer in evidence copy of a letter dated July 21, 1942, addressed to Mr. Leonard Woynicz and ask that it be marked in evidence as Plaintiff's Exhibit II for Identification.

“(The notary then marked the document as Plaintiff's Exhibit II for Identification and initialed it.)

“Q. Thereafter, did you receive a telephone call from Mr. Woynicz?

“A. Yes. My docket shows, and I recall, that two days later, on July 23rd, 1942, a person who said he was Leonard Woynicz telephoned me. He told me that he received my letter of July 21, 1942, and that he would like to come to an agreement relative to the support of his wife. He told me that he was willing to pay her \$20.00 a week for her support. [240] I told him that his offer was unacceptable and he concluded by saying that he would not pay any more.

“Q. In what language did you and Mr. Woynicz converse?

“A. In the English language.

“Q. Were you able to understand him?

“A. Very clearly.

“Q. Did he understand you and comprehend what you said to him?

(Deposition of Jack Klaw.)

“A. He gave every indication that he understood me fully.

“Q. Thereafter, did you represent Mrs. Woynicz in an action commenced by her for separation against her husband in the Supreme Court of the State of New York, County of Bronx?

“A. Yes. On August 4th, 1942, I prepared a summons and complaint in an action for separation which was verified by Mrs. Woynicz on said date and also affidavits and notice of motion for temporary alimony of \$100.00 per week and counsel fees of \$1000.00.

“Q. Do you know whether these papers were served on the defendant?

“A. Yes. These papers were served on the [241] defendant by my process server on August 6th, 1942, at his then place of business at 237 Lafayette Street, in the Borough of Manhattan, City of New York.

“Q. Have you a copy of these papers that were served on Mr. Woynicz? A. Yes.

“Mr. Klaw: I offer in evidence copy of summons and complaint and affidavits and notice of motion in action entitled ‘Alexandra Woynicz Sianozecki, Plaintiff, against Leonard Woynicz Sianozecki, also known as Leonard Woynicz, Defendant, and ask that they be marked in evidence as Plaintiff’s Exhibit III for Identification.

“(The notary ten marked the document as Plaintiff’s Exhibit III for Identification and initialed it.)

(Deposition of Jack Klaw.)

“Q. What happened thereafter?

“A. The following day, on August 7th, 1942, I received a telephone call from an attorney whom I know, Charles Ray Small, who has his offices at 280 Broadway, New York City. He told me that Mr. Woynicz had brought to him the copy of the papers that had been served on him in the separation action and wanted to know whether there was a [242] possibility of settling the matter through the entry of a separation agreement between the parties. I then asked him what the defendant had in mind. He told me that the defendant, Mr. Woynicz, authorized him to state that he was willing to enter into a separation agreement providing for the payment by the defendant to Mrs. Woynicz of \$30.00 a week. I told Mr. Small that this sum was unacceptable.

“Q. Did you thereafter hear from Mr. Small?

“A. No.

“Q. What happened thereafter?

“A. On August 13th, 1942, I received a telephone call from an attorney, J. Charles Zimmerman, who told me that the defendant had retained him to represent him in a separation action which had been commenced by Mrs. Woynicz and requested an adjournment of the motion. Two days later, on August 15th, 1942, I received a notice of appearance in said action from the law firm of Zimmerman & Simon whose post office address was 17 East 42nd Street, New York City.

“Q. Thereafter did you have any discussions

(Deposition of Jack Klaw.)

with Mr. Zimmerman relative to the separation action?

“A. Yes. On August 17th, 1942, Mr. Zimmerman [243] conferred with me at my office relating to a proposed settlement of the separation action. I told him that the plaintiff wanted the defendant to enter into a separation agreement with her wherein he would agree to pay her \$100.00 a week during her life for her maintenance and support and also that defendant convey to plaintiff in fee simple the two family house owned by him known as number 2929 Wellman Avenue, Bronx, and the lots adjoining the same. The home of the parties was maintained in one of the apartments in said building. Mr. Zimmerman then told me that he would take the matter up with Mr. Woynicz and after that he would give me the latter's answer.

“Q. What happened thereafter?

“A. I had further conferences with Mr. Zimmerman on August 19th, 20th and 21st of 1942. During these conferences, Mr. Zimmerman told me that the defendant insisted that he would only pay \$50.00 a week and that defendant wanted the separation agreement to contain a provision giving him the custody of Robert, one of the children of the parties, and also that he would not convey the real property to which I referred heretofore to plaintiff in fee simple but would only convey the [244] property to her for life with the remainder over to their three children.

(Deposition of Jack Klaw.)

“Q. What happened thereafter?

“A. On August 28th, 1942, after getting the plaintiff's consent to these terms, I prepared a separation agreement along the lines discussed with Mr. Zimmerman and delivered the same to him for execution by the defendant.

“Q. What happened thereafter?

“A. On September 1st, 2nd and 9th of 1942, I had further conferences with Mr. Zimmerman wherein he told me that the defendant wanted the agreement to provide that he be given six weeks' time to remove his personal tools, books and wearing apparel from the property heretofore referred to by me and that the agreement was to terminate on the defendant's death.

“Q. What happened thereafter?

“A. After plaintiff consented to defendant's demands, I prepared a new agreement and delivered the same to Mr. Zimmerman for defendant's execution on September 17th, 1942.

“Q. What happened after that?

“A. On September 22nd, 1942, Mr. Zimmerman phoned me and told me that the defendant had [245] executed the agreement on which the present suit is based, and the deed referred to in the agreement. An appointment was made with Mr. Zimmerman to present the agreement on September 23rd, 1942, at my office to be signed by plaintiff. On September 23rd, 1942, the plaintiff signed that agreement at my office in the presence of Mr. Zimmerman at

(Deposition of Jack Klaw.)

which time Mr. Zimmerman also presented the deed referred to in this agreement, executed by the defendant, together with defendant's check to the plaintiff for \$150.00 being the payments due under the agreement from August 23rd, 1942, to September 22nd, 1942, as well as defendant's check to my order for \$350.00 as my fees in accordance with paragraph 'Seventh' of the separation agreement.

"Q. Did you thereafter at any time communicate with the defendant with reference to the separation agreement?

"A. Yes. On April 16th, 1943, plaintiff brought in to me checks which the defendant had sent her which he had failed to sign. On that date, I wrote to the defendant a letter in which I referred to the separation agreement.

"Q. Do you have a copy of this letter? [246]

"A. Yes.

"Mr. Klaw: I offer in evidence copy of a letter dated April 16, 1943, addressed to Mr. Leonard Woynicz and ask that it be marked in evidence as Plaintiff's Exhibit IV for Identification.

"(The notary then marked the document as Plaintiff's Exhibit IV for Identification and initialed it.)

"Q. What is the full extent of your relationship to Irving Klein?

"A. None, except that I have known him for some time.

(Deposition of Jack Klaw.)

“Interrogatories propounded to the witness on behalf of the defendant, and his answers thereto:

“Interrogatory No. 1: Have you ever at any time seen the defendant?

“A. No.

“Interrogatory No. 2: If so, when, where, and who was present? A. No answer.

“Q. Interrogatory No. 3: Isn't it true that shortly [247] after the summons was served in the separation action in 1942 that you received a telephone call from Leonard Woynicz, or someone who stated that he was Leonard Woynicz?

“A. No. On July 23rd, 1942, I received a telephone call from Leonard Woynicz or someone who stated that he was Leonard Woynicz after I mailed him the letter marked Plaintiff's Exhibit II for Identification.

“Interrogatory No. 4: If so, please relate to the best of your recollection the entire conversation.

“A. He told me that he received my letter of July 21st, 1942, and that he would like to come to an agreement relative to the support of his wife. He told me that he was willing to pay her \$20.00 a week for her support. I told him that his offer was unacceptable and he concluded by saying that he would not pay any more.

“Interrogatory No. 5: Isn't it true that in the course of the above telephone conversation, the caller asked you if the suit were a joke?

(Deposition of Jack Klaw.)

“A. It is not true. He never mentioned the word ‘joke’ nor did he make any statement from which one could infer that he considered the matter [248] in the light of a joke.

“Interrogatory No. 6: Isn’t it true that the caller, who purported to be Leonard Woynicz, lacked reasonableness and coherence in his conversation?

“A. No. The caller was quite coherent in his conversation. I do not understand what is meant by the phrase ‘lacked reasonableness.’ If it refers to the offer of \$20.00 a week for the support and maintenance of the plaintiff, then the offer certainly lacked reasonableness in relation to the defendant’s then earning capacity and wealth.

“Interrogatory No. 7: Isn’t it true that you are financially interested in the action for which this deposition is being taken?

“A. The only extent of my financial interest in this action is that a forwarding fee is to be paid to me by the attorney of record, the amount of which is dependent upon the outcome of this action.

“Interrogatory No. 8: Isn’t it true that you have this present action on a fifty per cent contingent basis and that you are to share the proceeds with the California attorneys for the plaintiff? [249]

“A. I do not have this action on a fifty per cent contingent basis. I will receive a forwarding fee as already explained.

(Deposition of Jack Klaw.)

“Interrogatory No. 9: Have you ever at any time advanced any money whatever toward the financing of the costs and expenses of this action?

“A. No. All of the costs and expenses to date have been paid by the plaintiff.

“Interrogatory No. 10: If so, when, to whom, for what, and how much? A. No answer.

“Interrogatory No. 11: Did you have a conversation with Robert Woynicz at your office about December, 1946, or any time at all? “A. Yes.

“Interrogatory No. 12: Isn't it true that during the course of a conversation with Robert Woynicz, about December, 1946, that you said that Leonard Woynicz had a large sum of money hidden somewhere in the world? A. No.

“Interrogatory No. 13: Do you still represent Alexandra Woynicz as her attorney in any matters whatever? A. Yes. [250]

“Interrogatory No. 14: If the attorney-client relationship between yourself and Mrs. Woynicz no longer exists, when did it cease to exist?

“A. No answer.

“Interrogatory No. 15: Do you stand to gain financially if this suit is successful directly, or indirectly?

“A. Yes, only to the extent of receiving a forwarding fee to which I have already testified.

(Deposition of Jack Klaw.)

“Interrogatory No. 16: Do you owe the plaintiff in this action any money? A. No.

“Interrogatory No. 17: Does the plaintiff in this action owe you any money? A. No.

“Interrogatory No. 18: Are you at present obligated to the plaintiff in any way whatever?

“A. No.

“Interrogatory No. 19: Is the plaintiff at present obligated to you in any way whatever?

“A. No.

“Interrogatory No. 20: Are you at present a party with the plaintiff to any agreements whatever, oral or written? [251]

“No, except the retainer agreement in this action.

“Interrogatory No. 21: Are you at present a party with Daniel A. Weber, the attorney of record for the plaintiff, to any agreements whatever, oral or written?

“A. Yes, to the extent of receiving a forwarding fee in this action to which I have previously testified.

“Interrogatory No. 22: Just what is your relationship with Daniel A. Weber?

“A. None other than the usual relationship that exists between a forwarding attorney and the attorney to whom the former refers a legal matter.

(Deposition of Jack Klaw.)

“Interrogatory No. 23: What is the full extent of your relationship with Milton Kail?”

“A. Mr. Kail is an office associate who on previous occasions has retained me to do some work for him.

“/s/ JACK KLAU.

“Witness:

“IRVING KLEIN,
“Notary Public.”

Then follows the notary's certificate of Irving Klein, Notary Public, and the marking in evidence of Plaintiff's Exhibit II, for Identification, on deposition of Jack Klaw, a letter, dated November 17, 1949:

“July 21st, 1942.

“Mr. Leonard Woynicz,
“c/o New York Thread Grinding Corp.,
“237 Lafayette Street,
“New York City.

“Dear Sir:

“Your wife, Alexandra Woynicz, has consulted me with reference to your failure to furnish support to her.

“Before instituting action against you in accordance with her instructions, I desire to afford you

(Deposition of Jack Klaw.)

the opportunity of amicably adjusting this matter.

“Unless I hear from you on or before Friday, July 24th, 1942, as to your intentions in this matter, I shall have no other alternative but to institute action against you in accordance with your wife’s instructions.

“Very truly yours,

“JACK KLAW.”

Then, marked in evidence as Plaintiff’s Exhibit IV, for [253] identification, on deposition of Jack Klaw, November 17, 1949, a letter dated :

“April 16, 1943.

“Mr. Leonard Woynicz,
“New York Thread Grinding Corp.,
“237 Lafayette Street,
“New York, N. Y.

“Dear Sir:—

“I am herewith returning to you your checks Nos. 425, 426, 427 and 428, each in the sum of \$50.00, payable to the order of your wife, Mrs. A. Woynicz.

“The first check is returned to you because your Bank refused to receive the same for collection due to the fact that you superimposed the date of the making of the check, April 5, on some other date which you had first placed.

(Deposition of Jack Klaw.)

“The other checks are returned to you because you have failed to sign the same.

“I cannot understand why you repeatedly cause unsigned checks to be sent to my client and sometimes feel that it is a steadied attempt to cause her to undergo a great deal of annoyance and trouble.

“I trust that my feelings are wrong in this [254] matter and that in the future you will be more prompt in sending the checks due to Mrs. Woynicz under the agreement, in such form that your Bank will accept the same for payment.

“Your very truly,

“JACK KLAW.”

Now, with the court's permission, I would like to read one or two excerpts from the defendant's deposition.

The Court: You can read any deposition you wish. At least, I want you to do that. I want you to read them all.

Mr. Riseley: This is the deposition of Leonard Woynicz Sianozecki, taken on behalf of the Plaintiff, Tuesday, June 28, 1949, before David Newman, Notary Public.

I start on page 11:

DEPOSITION OF
LEONARD WOYNICZ SIANOZECKI

[First eleven pages of this deposition appear on pages 319 to 326 of this printed record.]

(Deposition of Leonard Woynicz Sianozecki.)

“Q. Do you recall in August of 1942, certain papers were served on you in the action that Mrs.—— A. Yes.

“Q. Do you recall the month? Was it August 1942?

“A. I don't recall the month what it was. I know it was summertime.

“Q. Do you recall what papers she served on you? A. Yes.

“Q. What were they? [255]

“A. Was false, was a lie.

“Q. No, do you recall what kind of papers they were? Was it an action for a separation?

“A. Yes, that is right.

“Q. When you got the papers, did you communicate with anybody?

“A. I'll tell you something, I was accused falsely of everything.

“Q. Just a moment. You will get a chance to bring all this out.

“A. I will tell you. I was innocent. I even thought it was a joke.

“Q. Mr. Woynicz, when you got your papers, did you telephone Mr. Klaw?

“A. After two weeks later I called him and asked him if it was a joke. Listen, I can accuse your mother——

“Q. Mr. Woynicz, these fellows are very expensive, the Reporters, and they get something like \$.60 a page.

(Deposition of Leonard Woynicz Sianozecki.)

"A. O. K.

"Q. You telephoned Mr. Klaw, is that right?

"A. Yes, and asked him if that is a joke or not. I thought it was a joke.

"Q. What did Mr. Klaw say to you? [256]

"A. He said, 'No, Mr. Woynicz, it isn't a joke. It is all true.'

"Q. Did you then consult a lawyer?

"A. Then really I wanted to consult Mr. Small.

"Q. Charles Ray Small?

"A. My company lawyer, but——

"Q. Was he the lawyer for your company?

"A. Yes, but he don't handle such a thing. He wanted to introduce me to somebody else.

"Q. Did Mr. Small tell you what the papers contained? A. No, he did not.

"Q. He recommended somebody else?

"A. He recommended, but I didn't take it. My partner, he recommended me Mr. Zimmerman.

"Q. Did you go to Mr. Zimmerman?

"A. Yes, I went to Mr. Zimmerman.

"Q. And was that in New York City?

"A. Yes.

"Q. Was Mr. Zimmerman a judge at that time?

"A. I don't know what he was.

"Q. Did you bring the papers to Mr. Zimmerman? A. Yes, I did.

"Q. Did Mr. Small go with you? [257]

"A. No.

"Q. You went there alone? A. Alone.

(Deposition of Leonard Woynicz Sianozecki.)

“Q. Did you have a talk with Mr. Zimmerman?

“A. I showed to him, I said——

“Q. Did you give him the papers?

“A. Yes, I did.

“Q. Did you have a conversation with him at the time you were in his office?

“A. Well, what conversation was there? He will take the case or not and he said ‘yes.’

“Q. Did he say anything to you about the nature of the papers?

“A. I don’t recall what he told me, but only on thing, I wanted to go to Court and he absolutely say ‘Don’t go to Court because you will get the same treatment like Moscow give.’ That is the truth.

“Q. Mr. Zimmerman told you that?

“A. Yes.

“Q. Now, during this conversation, was anybody else present aside from you and Mr. Zimmerman?

“A. No, nobody was there.

“Q. Now, before Mr. Zimmerman mentioned anything about Moscow, did you say anything to him about Moscow?” [258]

Then there are some marks on this answer.

“A. Yes, I said—he said—I said ‘Here are all my witnesses, every witness what I said. I used to come to shop six o’clock in the morning and left eight o’clock.’

“Q. Mr. Woynicz, you understand that your answers must be limited to the questions, otherwise we’ll never get finished.

(Deposition of Leonard Woynicz Sianozecki.)

“A. O. K. That is what I come to that. He said ‘You pay them. You cannot bring them.’ My partner, he would refuse because he is a partner. So I said ‘Here so what you are laughing, the Moscow Trial, the same thing here, I cannot bring anybody here.’ He said, ‘Yes, you have the same thing here. No jury will take testimony from those people.’ That was the question. He only wanted to accept testimony from my daughter. He refused every one of my witnesses. He refused everyone except my daughter and he said if my daughter write in own handwriting and sign that paper that he will accept it, and I told him ‘Let it be Moscow Trial. I don’t want my daughter. How my wife was bad or good, but she was mother to my daughter’ and I told him ‘I will not take testimony of child to protect myself’ and I say ‘Here, give me, I will [259] sign anything you want. If there be Moscow Trial, let it be Moscow Trial’.”

Then there is a lot more to it of the same effect, but that is all I wanted to get in, your Honor.

The Court: Do I understand that you have read to me all of the depositions that I have taken?

Mr. Riseley: No. I have read all of the depositions of Mr. Simon, and Mr. Klaw, and Mr. Zimmerman, and a portion of the deposition taken on behalf of the plaintiff of the defendant, who testified here.

The Court: Why not read the rest of it?

Mr. Riseley: Well, I can.

(Deposition of Leonard Woynicz Sianozecki.)

The Court: You think that the court ought to hear all the depositions. That is your assertion on your motion. So just complete the whole depositions that were taken by both parties.

Mr. Riseley: All right. I lost my place.

Mr. Weber: The top of page 15.

Mr. Riseley: I started on page 11. I am now at the top of page 15:

“Q. Mr. Woynicz, when you told that to Mr. Zimmerman, did he tell you that he would refuse to represent you? A. He did not.

“Q. He told you he was going to continue [260] in the case, is that right?

“A. There was no continue to the case. I signed the paper and that is, all, to fulfill——

“Q. Did you tell Mr. Zimmerman to see whether he could work out any arrangement or agreement with Mr. Klaw?

“A. That was around everything——

“Q. Mr. Woynicz, see if my question is clear.

“A. There was no use in talking.

“Q. Did you say to Mr. Zimmerman ‘Try to work out an agreement with Mrs. Woynicz’s lawyer’?

“A. Maybe I told him, I don’t recall. I don’t think so.

“Q. Do you recall whether or not in your conversation with Mr. Klaw, you know the telephone call to Mr. Klaw——

“A. It was very short conversation.

(Deposition of Leonard Woynicz Sianozecki.)

“Q. —do you recall whether or not you discussed any sum of money with Mr. Klaw?

“A. I don’t recall. I wouldn’t know. I was half crazy at that time. I don’t know nothing. I know that I thought that was a joke. Really, I mean it.

“Q. Did you offer Mr. Klaw, or did you offer to Mr. Klaw to pay Mrs. Woynicz \$20.00 a week?

“A. I don’t recall. I don’t think so.

“Q. Did you offer to pay any sum of money to Mr. Klaw?

“A. To Mr. Klaw I don’t know for nothing.

“Q. Your answer is that you don’t recall whether or not in your conversation with Mr. Klaw you discussed with him the payment?

“A. I don’t think there was, because it was very short you see. I was really half lunatic at that time. Now, that, if somebody is accusing you of things what you are not——

“Q. Mr. Woynicz——

“A. I don’t know what I was talking, that is all I know.

“Q. You don’t remember that subject?

“A. No, I don’t think I offered anything because I had nothing to say to him.

“Q. How many visits did you make to Mr. Zimmerman’s office? How many times did you visit Mr. Zimmerman?

“A. This I don’t recall. That is absolutely out of my brain.

(Deposition of Leonard Woynicz Sianozecki.)

“Q. Do you know a Mr. Simon, Mr. Zimmerman’s partner?

“A. Yes, that was some young fellow there [262] in another room.

“Q. Do you recall whether or not at any of your conversations with Mr. Zimmerman, Mr. Simon was there?

“A. I don’t know. I know—I don’t know what his name was, but there was a young fellow in his office, in another office something like here.

“Q. Do you recall whether or not there was anybody present when you spoke to Mr. Zimmerman, was anybody else in the room when you spoke to him?

“A. Some time. He was not all the time.

“Q. In other words, there was some occasions when somebody else was present during your conversation with Mr. Zimmerman? A. Yes.

“Q. Was that Mr. Simon?

“A. I don’t know what his name is. Probably his name is—associated, whatever you call it.

“Q. In any event he was a man who was in Mr. Zimmerman’s office?

“A. Yes, that is right.

“Q. Now, at the time of these conversations in Zimmerman’s office, you were still continuing as president of the New York Thread Grinding Corporation? “A. Yes.

“Q. And you were still signing checks?

“A. Yes.

(Deposition of Leonard Woynicz Sianozecki.)

“Q. How many people did you have working for you at that time? A. About 120.

“Q. Do you recall how long a period of time your meetings in Mr. Zimmerman’s office continued? A. I don’t get you.

“Q. Did the meetings in Mr. Zimmerman’s office continue for about two months or a month?

“A. Something like that. I don’t recall that. It was pretty long time, but how long I don’t recall.

“Q. Did Mr. Zimmerman explain to you that your wife was making a motion for temporary alimony? A. Yes.

“Q. What did he say about that?

“A. I don’t recall. He said she wanted to sue me for alimony, that is all.

“Q. Did he tell you that she was also bringing—suing for counsel fees? A. Yes.

“Q. Did he tell you that the action that had been brought by her was for a separation?

“A. Yes.

“Q. Did he tell you how much money Mrs. Woynicz was asking for?

“A. I think that was in that summons, whatever you call that.

“Q. And he told you the same figure that was mentioned in the paper?

“A. I don’t recall that, possibly, yes.

“Q. Well, did you know what figure was in the papers that were served?

“A. I’m not sure about that, I don’t know.

(Deposition of Leonard Woynicz Sianozecki.)

“Q. Did you read those papers that were served on you?

“A. If I read I couldn’t understand them.

“Q. Well, do you recall whether or not you read the papers at all? A. Not all.

“Q. Did you read part of the papers?

“A. Yes.

“Q. Did you understand from the papers that your wife wanted a separation? A. Right.

“Q. Did you understand from your reading of the papers that she was suing you for temporary alimony? A. Yes.

“Q. And that she wanted you to pay her temporary support? A. Yes.

“Q. And you knew that before you went to Zimmerman’s office.

“A. I am not sure about that. Probably he explained that to me.

“Q. Well, what phase of it did he explain to you?

“A. That she was suing me and I had to go to Court and he really frightened me up that I had been lost, they will take everything from me, so I knew that much.

“Q. Did you tell Mr. Zimmerman that you wanted to oppose the motion for temporary alimony? A. Yes.

“Q. You told him you wanted to fight it?

“A. Yes.

“Q. And you——

(Deposition of Leonard Woynicz Sianozecki.)

“A. I insisted on that.

“Q. And you told him you wanted to go to Court? A. Yes.

“Q. You told him you didn’t want to make any settlement? A. Absolutely.

“Q. You told him you wanted to contest the action? A. That is right.

“Q. You told those things to Mr. Zimmerman in his office? A. Yes, that is right.

“Q. Did you have any correspondence with Mr. Zimmerman? A. Not at the time.

“Q. When did you first have any correspondence with Mr. Zimmerman?

“A. Well, if you want to recall that, I tell you something——

“Q. No, the question is simple. When did you first have any written correspondence with Mr. Zimmerman?

“A. When after settlement only, not before. There was no written—before any—when the settlement come. When whoever that letter from Klaw come”—then there is some writing.

Mr. Weber: “Protesting.”

Mr. Riseley: (Continuing.)

“——protesting that my son”—then there is “took it,” [267 with a line drawn through it—“took the shovel and my wife demanded the shovel back and my son also, his own tree was growing, he took his tree and they demanded that tree. I told I

(Deposition of Leonard Woynicz Sianozecki.)

didn't take it. My son took, go ahead and take from him. That was the correspondence.

“Q. When did that take place, how long after this settlement?

“A. Well, probably when we moved, not really, not I but my children moved out from the house, that was two weeks or a week after they moved out.

“Q. I'll show you a paper Mr. Woynicz and ask you whether or not this bears your signature.

“(Witness examines document.)

“A. Yes, that is my signature.

“Q. Do you recall where you signed that?

“A. I don't remember the date.

“Q. Was it in the office of Mr. Zimmerman?

“A. Yes.

“Q. Do you recall who was present at the time?

“A. I don't remember.

“Q. Was Mr. Zimmerman present when you signed this? [268]

“A. Yes.

“Mr. Weber: I will ask that this be marked as Plaintiff's Exhibit 1 for identification.

“(The Notary then marked the document as Plaintiff's Exhibit 1 for identification and initialed it.)

“Q. I will show you this settlement agreement, Mr. Woynicz, marked Plaintiff's Exhibit 1 for identification and direct your attention to the name of

(Deposition of Leonard Woynicz Sianozecki.)

Joseph L. Simon as Notary Public in the acknowledgment and ask you whether that refreshes your recollection that Mr. Simon was present when you signed this agreement?

“(The witness examines document.)

“A. Possibly he was there when I signed—not possibly but probably he was there.

“Q. And was Mr. Zimmerman also present when you signed it? A. Yes.

“Q. Was anybody else present when you signed it? A. I don’t recall.

“Q. Do you recall Mr. Woynicz whether or not the agreement was shown to you on any day before you signed it? [269] A. Yes.

“Q. How many days before you actually signed the agreement was it first shown to you?

“A. I don’t know.

“Q. About three or four days?

“A. I don’t know.

“Q. In any event, it was a matter of some days?

“A. Some days, yes.

“Q. Now, between the time that you first saw the agreement, and the time that you signed it, were any changes made in the agreement?

“A. Only one change.

“Q. What change was that?

“A. She wanted my son Robert, was a minor, she wanted to come to see him and I told, she cannot see him because that was objection of my

(Deposition of Leonard Woynicz Sianozecki.)

daughter. The house, new house belonged to my daughter and she did not want to see——

“Q. And you told Mr. Zimmerman you wanted the agreement changed?

“A. Changed only that, that she cannot come.

“Q. To see the daughter?

“A. No, not the daughter, but she didn't care about the daughter, she wanted to see the boy. [270]

“Q. And you told Mr. Zimmerman to change that part of the agreement? A. Yes.

“Q. Were there any other changes in the agreement before you signed it?

“A. I don't recall any more.

“Q. Now, I'll show you Page 4 of the settlement agreement, Mr. Woynicz, marked Plaintiff's Exhibit 1 for identification and ask you whether or not that bears your initials 'L. W. S. ,' is that right? A. Yes.

“Q. And do you recall whether or not you put your initials at that point at the time you signed the agreement? A. Yes.

“Q. Was that to indicate your approval of the change as far as visiting your son was concerned?

“A. Yes.

“Q. Is that right? A. Yes.

“Q. Is that the change that you asked Mr. Zimmerman to make for you? A. Yes.

“Q. And at the time you put your initials [271] there, you understood that he was making that change pursuant to your request? A. Yes.

(Deposition of Leonard Woynicz Sianozecki.)

“Q. Were any other changes made in the agreement?

“A. I don’t recall any. Oh, yes wait a minute, it was they wanted us to move in a week’s time or something, wanted me to move. I couldn’t move you know. I couldn’t find a room. We bought the house, so I asked I think for three or four weeks, I don’t recall, but that is only changed from days to weeks. That was changed because we couldn’t find an apartment right away.

“Q. Now, when you signed this agreement marked Plaintiff’s Exhibit 1 for identification Mr. Woynicz, did you read it? A. I read partly.

“Q. Did you know that you were supposed to pay your wife \$50.00 a week by the terms of it?

“A. Yes.

“Q. Did you know that Mr. Klaw was to receive from you the sum of \$350.00 for lawyer’s fees?

“A. Yes, I paid.

“Q. And you paid it? A. I paid it.

“Q. And at the time you paid it to him you knew what it was for?

“A. Yes, that is right.

“Q. Now, did you know that you were supposed to give your wife a certain deed of a life interest on the Wellman Avenue property?

“A. Yes, I did.

“Q. And at the time you signed the agreement you knew that you were supposed to do it?

“A. Well, not the way what they did. That is

(Deposition of Leonard Woynicz Sianozecki.)

she is supposed to have right to one apartment as long as she lives. My kid was in the Army and I wanted for them when they come back. They had the right to move in there but instead of the apartment, they put the whole house, that only later when the boy come from the war I found out that he has no right to live there. That is the only time I find out what mistake I made because I am supposed to have that way so the kid when he come from the war, he has the place to live, but she refused to give him the apartment.

“Q. When did you first learn, Mr. Woynicz, that your wife was to get a life interest in the Wellman Avenue property under the agreement?

“A. After my boy come from the Army, from the [273] war, he was in the war for five and a half years, four and a half or five and a half. I was sure they had the right to move in there. I absolutely was sure all the time until he come there and she says, ‘No, you cannot move, that is my house.’

“Q. Mr. Woynicz, when you signed this agreement, what was to become of the separation action that your wife started against you?

“A. I don’t understand what you mean.

“Q. At the time you signed this agreement, what was your understanding as to the pending action brought by your wife?

“A. She is supposed to stop the papers.

“Q. And drop it? A. Yes.

“Q. And what was to become of her motion for

(Deposition of Leonard Woynicz Sianozecki.)

temporary alimony? Was that supposed to be dropped too?

“A. Supposed to be, only to come to the new agreement.

“Q. And at the time you signed this agreement, you knew that those two matters were to be dropped by your wife? A. Yes, that is right.

“Q. Now, do you have any recollection Mr. Woynicz, how long these negotiations lasted between your lawyer and your former wife’s lawyer?

“A. No, I don’t.

“Q. Was it a matter of several weeks?

“A. Quite a long time.

“Q. Were they bargaining back and forth?

“A. I don’t know. That was quite a long time. Mr. Zimmerman insisted on me to sign as soon as possible. I didn’t want the separation. I wanted reconciliation. I write to my friend, to my partners and we did everything possible to reconcile.

“Q. In other words you told Mr. Zimmerman that you were interested in a reconciliation?

“A. Yes, that is right.

“Q. You told him that before you signed the papers? A. Yes, that is right.

“Q. And——

“A. He insisted on signing because he said ‘You go to Court, you will be sunk,’ whatever that meant.

“Q. Did you tell Mr. Zimmerman to try to bring a reconciliation? [275]

“A. Yes, that is right, I did.

(Deposition of Leonard Woynicz Sianozecki.)

“Q. And did he come back to tell you or did he tell you whether or not he had tried to bring about a reconciliation?

“A. He never had time. He was too busy a man. He never had time to do anything.”

The next four questions have got some markings around them.

Mr. Weber: I think they were eliminated.

Mr. Riseley: They were struck out.

Mr. Weber: Down to line 18. I think that is the last.

Mr. Riseley: I will skip from line 6 to line 18, then:

“A. He did not tell that to me he tried. He told—I told him to try but whether he did or not I don’t know. He was not interested in it. He said ‘That will be better for you, you will be better off.’ I am a family man, I’m not a bum. I wanted to keep my house and he insisted on that.

“Q. Now, Mr. Woynicz, at the time that you had this discussion with Mr. Zimmerman in connection with signing this agreement, did you have any talk with him about what was to happen to the payments of \$50.00 a week in the event that your wife remarried? A. I don’t know. [276]

“Q. Do you recall any discussion with Mr. Zimmerman about what was to happen to the payments of \$50.00 a week in the event that your wife died?

“A. I think in that event I would stop payments.

(Deposition of Leonard Woynicz Sianozecki.)

“Q. And Mr. Zimmerman explained that to you?

“A. Yes.

“Q. Did you discuss with Mr. Zimmerman what was to happen to the weekly payment of \$50.00 a week in the event that your wife remarried?

“Mr. Styskal: I think that was asked and answered?

“Mr. Weber: Remarried, no.

“Mr. Styskal: Wasn't that the first question?

“A. That was the question.

“Mr. Weber: Read back the last part of the record, Mr. Reporter.

“(The Reporter read back the last part of the record.)

“Mr. Weber: Strike out the last question.

“Q. Don't you recall, Mr. Woynicz, that during this discussion with Mr. Zimmerman, he told you that under the agreement, in the event that your wife remarried, the payments of \$50.00 a week would stop? [277]

“A. Yes.

“Q. In your conversations with Mr. Zimmerman at the time this agreement was signed, did you have any discussion with Mr. Zimmerman as to what was to happen to your personal tools and books and other belongings at the Wellman house?”

“A. It was only discussed that much that we had been allowed to take our books and our clothes.

(Deposition of Leonard Woynicz Sianozecki.)

“Q. Mr. Zimmerman told you that?

“A. Well, I insisted on that. After all, the children are entitled to their clothes.

“Q. How about your personal tools?

“A. I didn’t have much. My boy had.

“Q. Did Mr. Zimmerman tell you that under the agreement, you had the right to take back these personal tools within six months?

“A. Six months”—then “nothing” is inserted in writing—“they took that right away, whenever they moved, my boy had a little experimental shop. He was in the Aviation Academy at that time and I had for him a little lathe and drill press and some tools and he was experimenting in the evening, so he had the right to take that.

“Mr. Styskal: Mr. Woynicz, may I suggest that you listen to the question more clearly. Mr. Weber [278] is asking you whether Mr. Zimmerman explained and told you these things, not whether you insisted.

“A. I think I insisted on that. He didn’t tell me.

“Q. (By Mr. Weber): You insisted on the tools being put in the contract?

“A. Yes, that only tools and clothes be taken, that is all. We even couldn’t take the spoons or anything.

“Q. Now at the time you signed that agreement, do you know whether or not Mrs. Woynicz had already signed it? A. I don’t know.

(Deposition of Leonard Woynicz Sianozecki.)

“Q. Well, she signed it after you, is that right?

“A. I think it was after. I don’t know.

“Q. At the time this agreement was signed by you, Mr. Woynicz, did you also write out a check to Mr. Klaw for \$350.00? A. Yes.

“Q. What was that \$350.00 for?

“A. For his fee, whatever it was.

“Q. Counsel fees, for representing your former [279] wife? A. Yes.

“Q. Did you also write out any check payable to the Plaintiff, your former wife, representing any of these \$50.00 payments? A. Yes.

“Q. How much?

“A. Whatever it was I don’t know. I don’t recall that, but I know it was all straightened up at that time, everything was straightened up.

“Q. Did you also execute a deed giving your wife a life interest in the Wellman property?

“A. Yes.

“Q. Was that signed at the same time you signed this agreement? A. The same time.

“Q. To whom did you give those other papers?

“A. What do you mean?

“Q. Did you give all the papers to Mr. Zimmerman that you signed?

“A. I—yes. I never saw Mr. Klaw. I’m sorry because he is a smart fellow. I would like to see a man like him. I mean it.

“Q. Well, you gave this agreement and the checks—— [280] A. To Mr. Zimmerman.

(Deposition of Leonard Woynicz Sianozecki.)

“Q. And the deed to Mr. Zimmerman?

“A. Yes, that is right.

“Q. Now, after you signed these papers in Mr. Zimmerman’s office, how long after that did you make the next payment to Mrs. Woynicz?

“A. Until I think in May, 1947.

“Q. You made payments every week?

“A. Every week regularly ahead of time, even.

“Q. How did you make those payments, Mr. Woynicz? A. By checks.

“Q. Your personal checks? A. Yes.

“Q. Was it the New York Thread Grinding Corporation account or your personal account?

“A. No, my personal account.

“Q. On what bank?

“A. Manufacturer’s Trust Company.

“Q. What branch was it, do you know?

“A. It is on Broadway and Canal.

“Q. Broadway and Canal Street in New York City? A. Yes.

“Q. Do you have those checks with you? [281]

“A. No, not here.

“Q. Do you have them at home here?

“A. Yes.

“Q. By the way, have you told us your present home address? A. You want now?

“Q. Yes. A. 232 West Imperial Highway.

“Q. Is that in Los Angeles? A. Yes.

“Q. How long have you been living at that address? A. Since November 13, 1948.

(Deposition of Leonard Woynicz Sianozecki.)

“Q. Do you live there with your present wife?

“A. That belongs to her.

“Q. And when did you remarry?

“A. In September 19, 1948—no, October 19, 1948.

“Q. What is your present business address, Mr. Woynicz? A. 2731 Lincoln Boulevard.

“Q. Santa Monica? A. Santa Monica.

“Q. What is the name of your company?

“A. G. M. C. Tool and Die Company. [282]

“Q. Is that a partnership? A. Yes.

“Q. Consisting of whom?

“A. I had a partner, but just he couldn't stand no more, so he run away. I have another partner now and the name is Mr. Bernard Helms.

“(At this point an off-the-record discussion was held.)

“Q. Now, when you went to Mr. Small did you have any discussion with him about arranging a settlement or separation agreement to get rid of the separation action?

“A. I don't think so. He proposed, you know, to settle—he likes to settle out of court always.

“Mr. Styskal: Mr. Woynicz, recall the question. Mr. Weber's question was with respect to Mr. Small.

“A. I don't know. I don't remember.

“Q. (By Mr. Weber): Don't remember discussing with Mr. Small a possible settlement of the action that your wife brought?

(Deposition of Leonard Woynicz Sianozecki.)

“A. I don’t think so. The discussion was he wanted to represent me, but he said he cannot. He don’t handle such cases.

“Q. Don’t you remember in your discus- [283] sion with Mr. Small, you discussed with him offering the sum of \$30.00 a week in settlement? Don’t you remember that? A. No, I don’t.

“Q. In your discussions with Mr. Zimmerman, do you remember Mr. Zimmerman discussing with you what your earnings were at that time?

“A. Possibly, maybe not. I don’t recall.

“Q. Well, don’t you remember Mr. Zimmerman telling you that on a motion for temporary alimony, the amount of money that you were making was a matter of importance? A. Yes.

“Q. And don’t you remember you told Mr. Zimmerman how much money you were then earning as president of the New York Thread Grinding Corporation? A. Possibly I did.

“Q. Now, did Mr. Zimmerman explain to you that on motions for temporary alimony, the more money the husband earned the more money the wife was entitled to?

“A. Yes, he frightened me plenty.

“Q. He told you that? A. Yes. [284]

“Q. As a matter of fact, Mr. Zimmerman threatened you, didn’t he? He said, ‘Sign the agreement or else’?

“A. Not exactly he threatened. He threatened that I will lose in the court by any way. He said, ‘You have no legs to stand on in the court.’

(Deposition of Leonard Woynicz Sianozecki.)

“Q. As a matter of fact, Mr. Zimmerman told you that your wife would probably win the case?

“A. That is right.

“Q. And he told you it would be a good idea if you can bring about a reasonable settlement?

“A. Yes, that is right.

“Q. He recommended it highly?

“A. Yes, that is right.

“Q. When did you go to Florida, Mr. Woynicz? A. In January, 1947.

“Q. 1946?

“A. '47, right after New Year's.

“Q. Now, between the time that you signed this agreement and the time that you went to Florida, you had made all the payments of \$50.00 a week?

“A. Absolutely.

“Q. By your check? A. Yes.

“Q. And what were these \$50.00 payments? [285]

“A. What? I didn't get you.

“Q. What were these payments for that you made from the time that you signed the agreement to the time that you went to Florida?

“A. I am supposed to pay.

“Q. When for the first time—I'll strike that. When you say supposed to pay, you mean under the agreement? A. Yes.

“Q. When for the first time did you send any kind of a letter to your former wife or to her attorney?

(Deposition of Leonard Woynicz Sianozecki.)

“A. It was, letter was sent by Mr. Helliwell in Miami.

“Q. Mr. Woynicz, I show you what appears to be the original letter——

“(At this point an off-the-record discussion was held.)

“Q. ——sent by the law firm of Bouvier, Helliwell and McCaul, dated March the third, 1947, and is that the letter to which you refer?

“(Witness examines document.)

“A. Yes.

“Q. Now, as far as you know, was any other letter sent by you or by any one on your behalf to Mrs. Woynicz by Mrs. Woynicz' lawyer, prior to this [286] letter of March 3, 1947?

“A. I don't think so.” Then there is something written in there. I think it is, “I recall there was many letters.”

“Mr. Weber: I ask that this be marked as Plaintiff's Exhibit 2 for identification.

“(The notary then marked the document as Plaintiff's Exhibit 2 for identification and initialed it.)

“Q. Did Mr. Helliwell show you this letter before he sent it?

“A. I don't recall, but I think he did.

“Q. By the way, Mr. Woynicz, during all the

(Deposition of Leonard Woynicz Sianozecki.)
negotiations leading up to the settlement agreement,
you did not see either Mr. Klaw or the Plaintiff?

“A. I never saw either one. I’m sorry I did not.
Maybe it would not be calamity like that.

“Q. I’ll show you schedule or Exhibit B attached
to the Complaint and ask you whether or not this
correctly sets forth all of the payments of money
made by you to your wife commencing April 9,
1947?

“(At this point an off-the-record discussion
was held.)

“Mr. Weber: It is stipulated by Counsel
that [287] a blank space be left to enable the wit-
ness to answer the question last propounded by
insertion thereof at the time of executing this depo-
sition.

“Mr Styskal: So stipulated.

“(The following blank spaces were left for
the witness to insert the information as re-
quested above.)

“Answer: Yes, that is correct.

“Q. (By Mr. Weber): Will you also tell us the
date of your last weekly payment of \$50.00 to your
wife?

“A. It was October when I left Miami. I left
money with Mr. Helliwell.

“(At this point an off-the-record discussion
was held.)

(Deposition of Leonard Woynicz Sianozecki.)

“Mr. Weber: The same stipulation with respect to this last question. A blank space is to be left to enable the witness to insert the answer at the time of executing the deposition?

“Mr. Styskal: So stipulated.

“(At this point an off-the-record discussion was held.)

“(The following blank space was left for the witness to insert the information as requested above.) [288]

“A. October, 1948.

“Q. (By Mr. Weber): Now, do you recall any discussion with Mr. Helliwell in Florida about giving Mr. Klaw permission to see your income tax returns for certain years?

“A. Yes, all the years I told from 1940 to the last date, December, '46.

“Q. And do you recall what Mr. Klaw's purpose was in seeking to examine those tax returns?

“A. To find out my earnings.

“Q. And you authorized Mr. Helliwell to give Mr. Klaw that permission? A. I did.

“Q. Was that in November, 1947? A. Yes.

“Q. Mr. Woynicz, do you recall in your discussion with Mr. Zimmerman at or about the time you signed the settlement agreement, there was some discussion about the fact that your earnings at that time were most unusual because of the war situation? Do you remember that discussion?

(Deposition of Leonard Woynicz Sianozecki.)

“A. I don’t quite understand you.

“Q. Well, maybe I can rephrase it. It is not too clear. Do you recall at the time that you were [289] visiting Mr. Zimmerman’s office, when the settlement agreement was being negotiated, there was a discussion with Mr. Zimmerman in which there was some mention of the fact that your earnings at that time were unusually high because of the war situation? A. Yes.

“Q. And did you explain that to him?

“A. Yes.

“Q. And was there also some discussion at that time about the fact that since the earnings were unusual, they should not be taken as a basis for alimony?”

The answer has been marked out and written in:

“A. Yes, but he insisted on life payments.

“Q. Well, what did Mr. Zimmerman say to you at the time that you told him your earnings at that time were simply—were unusual because of the war situation?

“A. What do you mean ‘unusual’? I was paying one-third what I was making. I was making \$150.00 a week and I was paying her \$50.00 a week. Later I was making better money, yes. Mr. Klaw has the same thing. Here is my earnings (indicating a document). Mr. Klaw has the same thing.

“Q. Mr. Woynicz, since 1942, have you consulted [290] any doctors in reference to your mental condition? A. Yes.

(Deposition of Leonard Woynicz Sianozecki.)

“Q. What doctors have you consulted?

“A. What Doctor Anthony (spelling) B-O—give me a paper and I’ll write it.

“(Witness writes on piece of paper.)

“(Spelling) B-O-G-A-T-K-O.

“Q. Where is he located?

“A. 139 East 66th Street.

“Q. New York City? A. Yes.

“Q. When did you first go to him?

“A. He is my family doctor. He was always—he operate on me three times.

“Q. Oh, is he a general practitioner?

“A. Yes.

“Q. He was your family doctor? A. Yes.

“Q. When did you see him last?

“A. What do you mean last?

“Q. When did you last go to him for any treatment? A. Before I went to Florida.

“Q. Was it sometime in the early part of 1947? [291]

“A. No. ’46. Maybe ’47, because I left I think—maybe it was in January.

“Q. What did you see him for?

“A. Just to tell ‘goodbye’ and get a checkup.

“Q. And was that the last time you saw him?

“A. Yes, and he sent me to specialists. I don’t recall, Dr. Niles or something like that, for nervous——

“Q. When was that?

(Deposition of Leonard Woynicz Sianozecki.)

"A. I don't know. It was 1945 or something. I just was going to pieces.

"Q. In 1945?

"A. I think in 1945. I don't recall.

"Q. Is Dr. Niles located in New York City?

"A. Yes, somewhere on 54th Street. I don't recall.

"Q. Does he spell his name (spelling) N-I-L-E-S? A. I think so.

"Q. What is his first name?

"A. Harold. On his advice I went to Florida. He said, 'You have to go to some warm climate or you will go to pieces.'

"Q. And Dr. Niles recommended that you go to Florida? [292]

"A. Yes, recommended a long time to go, but I couldn't. When I had the shop I couldn't go.

"Q. You saw Dr. Niles before, shortly before you went to Florida?

"A. Not exactly shortly, about a year before.

"Q. About a year before? A. Yes.

"Q. And between 1942 and 1946 did you go to any doctors for——

"A. You see I had what you call lumbago, whatever it is. I couldn't walk, pain. I went to Dr. Krieger and Dr. Niles and that is the only three doctors that I went to.

"Q. Who was Doctor Walter S. Baro?

"A. I don't know." Then written in, "I forgot the name. I was not sick only for checking."

(Deposition of Leonard Woynicz Sianozecki.)

“Q. Have you ever seen a Dr. Baro?

“A. No.

“Q. Now before your wife started the action for separation in 1942, Mr. Woynicz, do you recall whether or not you received a letter from Mr. Klaw, her Attorney, advising you that such an action was about to be brought? A. Nothing.

“Q. You don't recall? [293]

“A. He did not send. Just the same like you, Mr. Weber, the same was, just lightning struck from clear sky,”—“from clear sky” is written in—“that is all.

“Q. At the time you spoke to Mr. Zimmerman in connection with the signing of the settlement agreement, was there any discussion between you and him as to what was to happen if times went bad?

“A. Yes. I told him and he said——

“Q. What did you tell him?

“A. How I'd be able to make \$50.00 payments.

“Q. And what did Mr. Zimmerman say?

“A. He said ‘That is the only way out, the only way forever after.’ He absolutely refused to make any limit.

“(At this point an off the record discussion was held.)

“Q. By the way, Mr. Woynicz, prior to the time you signed this separation agreement, you had entered into a number of real estate transactions?

“A. Yes.

(Deposition of Leonard Woynicz Sianozecki.)

“Q. About how many would you say?

“A. I told you I bought a farm.

“Q. Is that the same property that was located in South Brunswick, New Jersey or is the South Brunswick [294] property some other property?

“A. There was only one property was the farm, in Deans and the house in Lakewood and that is all.

“Q. And you also had some property in Mastie Beach? A. Yes. There was lots there.

“(At this point an off the record discussion was held.)

“Mr. Weber: I have no further questions.

“Cross-Examination

“By Mr. Styskal:

“Q. Mr. Woynicz, you say you entered into the corporation known as New York Corporation, Grinding Corporation in 1942? A. 1940.

“Q. 1940? A. Yes.

“Q. And you were president of that corporation?

“A. Yes.

“Q. In 1942 you were president of the corporation? A. Yes.

“Q. Did you have an office?

“A. No, it was a general— [295]

“Q. Did you work in the office?

“A. Just I was working all the time in the shop.

“Q. You were working all the time in the shop?

“A. It was just only for signature. I used to

(Deposition of Leonard Woynicz Sianozecki.)

come to the office only for signature, checks, some paper.

“Q. Somebody would bring you in to sign these documents? A. Yes.

“Q. Who was running the office?

“A. Mr. Barudin naturally, and Barudin——

“Q. And you were working at all times in the shop? A. Yes.

“Q. Were you paid shop wages? A. Yes.

“Q. You were? A. You mean the money?

“Q. Yes.

“A. No, I paid—cashier, the girl.

“Q. Were you paid on an hourly basis for working in the shop?

“A.” —this is written in—“I did not [296] understand. I thought they ask about working men. Mostly hourly for working but the foremen was all contractors.

“Mr. Weber: No, he means what was your pay? His question is what pay were you getting?

“A. Just flat pay.

“Q. (By Mr Styskal): A salary then?

“A. Yes.

“Q. Did you negotiate contracts that came into the shop?

“A. We discussed the price with Mr. Barudin. Barudin signed as an educated man. He was a Cooper Union graduate. One of the best schools. He was an engineer. I was practically you know. I give the practical and he was the technical. He was

(Deposition of Leonard Woynicz Sianozecki.)

real good partner. He had been—was my partner three times.”

Then something is stricken out. “I would like to have him.

“Q. Mr. Woynicz, these contracts that came in, you signed some of them, did you?

“A. Some of them important, like you see the president had to sign the government contracts. The others Barudin used to sign. [297]

“Q. Now, those that you signed, did you read them?

“A. Well, he read to me. He explain to me in Russian.

“Q. He explained that to you in Russian?

“A. Yes.

“Q. And then you signed on his advice to sign?

“A. Yes.

“Q. And all during the year of 1942——

“Mr. Weber: These are contracts other than the one suit?

“Mr. Styskal: Yes, that is what I’m talking about. The contracts that came into the corporation.

“Mr. Weber: Well, actually you are travelling far afield, aren’t you?

“(At this point an off the record discussion was held.)

“Q. (By Mr. Styskal): Mr. Woynicz, you did go to a Doctor in Los Angeles, didn’t you just recently? A. No, I did not.

(Deposition of Leonard Woynicz Sianozecki.)

“Q. Didn’t you go to a Doctor in the Subway Terminal Building?

“A. No, my wife was every week but I didn’t. Somehow after Florida I cleared myself of everything. [298] I just got cured of everything, thanks to God I don’t need Doctor now.

“Q. Didn’t you go to a Doctor that was suggested—didn’t Mr. Riseley send you to a Doctor?

“A. Oh, yes, that is right. It slipped out of my mind. He just took the records of what was with me during the period of 1942, and check up.

“Q. And do you remember his name?

“A. Some Italian name.

“Q. Could it be (spelling) B-A-R-O?

“A. Yes.

“Q. Now, these property transactions, real estate property transactions that you had were prior to your agreement with your former wife?

“A. Yes.

“Q. How long a time prior to ’42 did you enter into those transactions?

“A. Well, one was in 1919 in January, 1919, and another in January, 1944 or ’44, something like that, ’44, I think, ’44, because I had the farm exactly 5 years. Then I bought the house in Lakewood, New Jersey, and I traded that for—in 1932 or ’31, something like that, to the house in New York on 2929 Wellman Avenue, the one she has now. [299]

“Q. When was that last transaction, ’31 did you say?

(Deposition of Leonard Woynicz Sianozecki.)

“A. ’31 or ’32. I don’t know. It was in December.

“Q. Well, then, it was approximately ten years was the last real estate transaction you had prior to the time of your separation with your wife?

“A. Yes, that is right. Then later I bought adjoining lots where the house, I bought big lot, very big lot adjoining the house she had.

“Q. When was that Mr. Woynicz?

“A. On 1941 or something like that. I don’t recall.

“Mr. Styskal: I don’t think there are any further questions.

“Redirect Examination

“By Mr. Weber:

“Q. In connection with Mr. Barudin, you assisted him in estimating the cost or price for certain work?

“A. Yes, and the way to make it. I was a practical man there working 49 years.

“Q. And this visit that Mr. Riseley suggested, that is during the pendency of this lawsuit, isn’t it?

“A. Yes, that is right.

“Q. Did you see any doctors in Florida?

“A. Yes.

“Q. When did you last see a doctor in Florida?

“A. Just before I left Florida, Doctor Snow.

“Q. Doctor Snow? A. Yes.

“Q. Do you know what his first name is?

(Deposition of Leonard Woynicz Sianozecki.)

“A. I wouldn’t know.

“Q. What city is he located in?

“A. Hollywood.

“Q. Hollywood, Florida? A. Yes.

“Q. Does he spell his name (spelling) S-N-O-W?

“A. Yes.

“Q. Do you recall the month in which you left Florida? A. In october.

“Q. 1947? A. 1948.

“Q. 1948?

“A. Yes, I left Florida in October, 1948.

“Q. In other words you were there almost two years? [301]

“A. Yes, that is right. If you need doctor, you go to Doctor Snow, he is a great man.

“Q. Is Doctor Snow a general practitioner or is he a specialist?

“A. He is in the Hollywood Clinic. He is a staff doctor of the Hollywood Clinic.

“Q. As far as you know he is not a specialist?

“A. I don’t think so. At the clinic.

“Q. What particular ailment did you consult him about?

“A. Sciatica and lumbago and the heart. He cured me of everything.

“Q. I think I asked you this before but I’m not certain. You saw Doctor Bogatko in 1945?

“A. 1946.

“Q. And was that the first time you saw Doctor Bogatko?

(Deposition of Leonard Woynicz Sianozecki.)

“A. What do you mean the first time?

“Q. When prior to 1946 did you see Doctor Bogatko? A. 1911.

“Q. In other words between 1911 and 1946.

“A. I know him when he was a student yet.

“Q. I mean when did you go to see him about your condition before 1946? [302]

“A. He was taking care of me all the time.

“Q. In connection——

“A. Whatever ailment I had. He operated on me three times. He is a surgical doctor.

“Mr. Weber: That is all.

“Mr. Styskal: No further questions.

“Mr. Weber: I'll stipulate the deposition may be signed before any Notary Public.

“Mr. Styskal: So stipulated.

“Mr. Weber: I have no further questions but I want to keep it open pending the opportunity to complete the two answers and the examination of the checks.

“Mr. Styskal: So stipulated.

“/s/ LEONARD WOYNICZ
SIANOZECKI,
“Witness.”

I might as well pick up the first part that I haven't read of the deposition. Then that will make this deposition complete.

The Court: Very well.

Mr. Riseley: Going back to the beginning of the deposition, having started previously on page 11, this is:

“Deposition of Leonard Woynicz Sianozecki, taken on behalf of the Plaintiff, Tuesday, June 28, 1949, [303] at 2:00 o'clock P.M. at 208 South Beverly Drive, Beverly Hills, California, pursuant to stipulation attached hereto, before David Newman, Notary Public.”

“Los Angeles, California, Tuesday, June 28, 1949, 2:00 P.M.

“LEONARD WOYNICZ SIANOZECKI

“Called as a witness by and on behalf of the Plaintiff, being first duly sworn, testified as follows:

“By The Reporter: What is your full name, please?

“By The Witness: Leonard Woynicz Sianozecki.

“Direct Examination

“By Mr. Weber:

“Q. Mr. Woynicz, you are the Defendant in this case? A. Yes.

“Q. Has your Attorney explained to you what a deposition is?

“A. Just to give—just to answer the questions that you ask. [304]

“Q. Did he explain to you this is like giving testimony in Court? A. Well, yes.

“Q. Mr. Woynicz, if there is any question that

(Deposition of Leonard Woynicz Sianozecki.)

you don't understand, you will please say so and I will try to reframe the question. A. O.K.

“Q. How old are you? A. Sixty-four past.

“Q. When did you come to America?

“A. September 12, 1911.

“Q. Did you settle in New York?

“A. First in Elizabeth, New Jersey, and then other parts of New Jersey, Deans, New Jersey, then Lakewood, New Jersey, then in New York.

“When did you first go to school in America?

“A. 1911.

“Q. What school did you go to?

“A. It is Elizabeth No. 1.

“Q. Public School No. 1 in Elizabeth, New Jersey. A. Yes.

“Q. And how long did you go to school there?

“A. Three winters of night school, 1911, 1912 and 1913.

“Q. And what school did you go to after that?

“A. I didn't go to no school no more. I couldn't go because then I had obligation. My sister came 1913, and 1914 come war and come her husband, my sister's husband.

“Q. And after you went to Public School No. 1 in Elizabeth, New Jersey, you went to work?

“A. I was working all the time. I had been working for Singer Sewing Machine Company.

“Q. When did you first go to work for Singer Sewing Machine? A. In December, 1911.

“Q. How long did you work for them?

(Deposition of Leonard Woynicz Sianozecki.)

“A. Until March or April, 1915.

“Q. What sort of work did you do?

“A. Tool maker.

“Q. And for whom did you work after you left Singer Sewing Machine?

“A. Then Modern Machinery Company. Altogether it was about sixteen tool makers, we come together and we organize a company named Modern Machinery Company in New York. [306]

“Q. When was that company organized?

“A. 1915.

“Q. Did you organize that company?

“A. No, I joined them when they was organized already.

“Q. What sort of work did you do for them?

“A. Tool maker, the same thing as the Singer Sewing Machine.

“Q. How long did you work for them?

“A. When the Revolution was in Russia first then they left for Russia, the whole company.

“Q. Mr. Woynicz, how long did you work for the company?

“A. I can't remember. Do you remember what time the—after the Czar was in Russia?

“Q. 1917? A. I think was 1917.

“Q. And then did you go to work for somebody else?

“A. Then for a while I was not working. Then we come together, some of them didn't go to Russia so we organized another company.

(Deposition of Leonard Woynicz Sianozecki.)

"Q. You and who else?

"A. Well, ten altogether was.

"Q. What was the name of that company? [307]

"A. New York Thread Grinding Company.

"Q. When was that company formed?

"A. I think 1917. I don't recall but about 1917,
I think so.

"Q. Were you one of the owners of that company?
A. Yes. That was a corporation.

"Q. A corporation? A. Corporative.

"Q. Corporation?

"A. Not corporation, cooperative. We had no
hired men.

"Q. Were you an officer of that company?

"A. Well, if you call that you would have to—
I was president of that company.

"Q. How long were you president?

"A. Until it dissolved. The company was dissolved I think in the end of 1919, something like that.

"Q. Then what did you do after that?

"A. Then I bought myself a farm in Deans, New Jersey, what I told you.

"Q. Did you do farming after that?

"A. Yes.

"Q. How long?

"A. For five years exactly. [308]

"Q. What happened after that?

"A. And I sold the farm and bought the house

(Deposition of Leonard Woynicz Sianozecki.)
in Lakewood, New Jersey.

“Q. When did you go into business thereafter?

“A. I was there. I went back to New York in December, 1925.

“Q. Did you go into business?

“A. Not yet. I was working for one of my former partners, Joseph Kucera.

“Q. What sort of work did you do for him?

“A. The same thing, tool making.

“Q. Did you have an interest in that business?

“A. No. He died in June, 1926.

“Q. Then what did you do?

“A. You see the company was in terrible condition. He just simply neglected everything.

“Q. Did you take over the company?

“A. So I bought that company from the widow. I think I paid some \$200.00.

“Q. What is the name of the company?

“A. Radio Production Machinery Company.

“Q. Were you the sole owner of that business?

“A. After death, yes.

“Q. How long did you operate that business?

“A. I had for a while a partner but I think only [309] about six months because the crash come 1930 and he quit right away. We lost money in the bank so he quit instantly and I was keeping on until 1940.

“Q. And you were the sole owner from the time that he dropped it in 1930 until 1940?

“A. Yes, sir.

(Deposition of Leonard Woynicz Sianozecki.)

“Q. What happened to the business in 1940?

“A. In 1940 my former partner of N. Y. T. G. Co., first that we had partner, they come to me to organize another company.

“Q. What was the name of that company?

“A. The same thing, New York Thread Grinding, was not company, was a corporation.

“Q. Were you one of the organizers of that corporation?

“A. Well, six of us were altogether.

“Q. Did you become an officer of that corporation?

“A. Yes, the same like we had before, the same, Mr. Barudin was my partner, the third time we become partners, the third time.

“Q. What office did you hold?

“A. The same thing, president and Barudin was vice-president. [310]

“Q. When did you become president, in 1940 when it was organized?

“A. Yes, that is right.

“Q. How long did you remain president?

“A. Until 1946.

“Q. What happened in 1946 to the corporation?

“A. Mr. Barudin got very sick. He got heart trouble and one partner died so that was all lost.

“Q. Was the corporation dissolved?

“A. Dissolved entirely. December, 1946, it was entirely lost, everything lost.

“Q. Now, what were your duties from 1940 to

(Deposition of Leonard Woynicz Sianozecki.)

1946 in connection with that corporation?

“A. I was just manager and in the name I was president, and I was signing checks, I was hardening material, and working in shop.

“Q. You were the general manager of the business?

“A. Well, inside we will say.

“Q. And in charge of the shop?

“A. Yes, that is right.

“Q. Did you also sign checks?

“A. Yes, I was signing checks and Mr. Goncharoff and another fellow—he was signing the checks with me.

“Q. Now, did you sign contracts for the [311] corporation during that time?

“A. No, mostly Mr. Barudin was because he was the outside man.

“Q. He handled——

“A. Some government contracts I had to sign.

“Q. How many people did you have working for you?

“A. The most, the biggest amount was 270.

“Q. And these people were in the shop?

“A. Yes.

“Q. And you were in charge of them?

“A. Yes. You see in the night time was Mr. Goncharoff——

“Q. Was this corporation the New York Thread Corporation dissolved before your wife brought an action against you? A. No.

(Deposition of Leonard Woynicz Sianozecki.)

“Q. In 1946 or after?

“A. No, after. You mean this action?

“Mr. Weber: Strike that last question. I have got the last two mixed up.

“Q. Now at the time that your wife started an action against you in 1942 you were then working?

“A. In the shop.

“Q. Or associated with the New York Thread Grinding Corporation, is that right?

“A. Yes, that is right.

“Q. And where were you living at the time?

“A. Living at 2929 Wellman Avenue.”

And that is where I started to read the deposition before.

The Court: Now, the court understands that all depositions that were presented at the time of the trial in chief and on the motion have been read to the court; is that correct?

Mr. Riseley: Yes, your Honor.

The Court: I was wondering whether we can get through with this motion this afternoon.

Mr. Weber: My reply will take less than five minutes.

The Court: Very well, if we can. But I wanted to say if we could not, we could recess.

Mr. Weber: I have another court engagement on Monday.

The Court: Very well, if it will not take long. Go ahead.

Mr. Weber: I have listened for several hours to the reading of the depositions, and I can best summarize them by quoting your Honor's language voiced at the end of the trial right from the bench, after your Honor had heard all the testimony and seen all the exhibits. I would like to borrow the language of the court that if there be any doubt that Mr. Woynicz knew exactly what was going on in the course of these negotiations, that he was making a separation agreement, that it involved alimony, and that his wife was supposed to drop the action, that he made suggestions to change the contract, in fact, he insisted on certain modifications and revisions, that he paid checks and issued them and knew what they were for, and knew at all times what was going on, and if there was any question it was dissolved by the four years continuous payments which he admittedly knew were made in pursuance of the agreement.

Counsel talks about the New York law and separation agreements. I am not going to burden the court with a lot of cases, but I will take time to read an excerpt from the case of *Goldman v. Goldman*, which makes it very clear that where parties have separated, as they were here, or where the wife was suing the husband, as we have here, there is no question but what agreements of this kind may be validly entered into between the husband and wife. I quote at page 300. This is a case that has been cited repeatedly in the New York cases, where this is said:

“ . . . Such agreements, lawful when made, will be enforced like other agreements unless impeached or challenged for some cause recognized by law. It is not in the power of either party acting alone and against the will of the other to [314] destroy or change the agreement.”

Here we have a defendant, who, after making these payments for so many years, at a time when he finds it convenient goes down to Florida in January of 1947, establishes his residence, and then for the first time sends a letter to his cast-off wife of 26 years, and for the first time repudiates the agreement, after he has recognized and paid on it for four years, and doesn't say anything about mental incompetence. Then when he succeeds in getting an ex parte divorce, then he comes out to California, where we catch up with him. He makes no payments since October, 1948, and then he comes in and asks the court to destroy an agreement solemnly entered into by a president of a corporation, where he participates in the negotiations and pays checks under it for four years. We submit that would be a gross injustice, and the decision of the court is eminently sound.

The Court: Do you wish to reply?

Mr. Riseley: In these depositions there were several inconsistencies. The glaring one was the testimony of Mr. Simon to the effect that Mr. Zimmerman told the defendant that he was sure to lose. And Mr. Zimmerman consistently denies that in his deposition, four or five times, that he ever told the

defendant, "You have no leg to stand on at all. You will be sunk if you go to court," while Mr. Simon in his deposition says that he did tell him that. [315]

There is another point I noticed in reading these depositions. It has been put to the court, and I think Mr. Zimmerman would have us believe in his deposition that he prepared the property settlement agreement, and yet in Klaw's deposition he says that he, Klaw, prepared it, and, finally, in his deposition says that Simon prepared the property settlement agreement. That might be a question of memory. However, if we are going to attach any credibility at all to the defendant's testimony, what about these Moscow trials? As I said before, he has repeatedly said in his deposition, and he says in his testimony that he said, "Let it be Moscow trial," that he had this insane delusion, if you please, about the Moscow trials.

Did he sit up and dream up this story, that if you go to court nobody will believe your partners or your employees? If you go to court, nobody will believe your daughter, or the girl you will marry? Did he have a hallucination, or did the lawyers tell him that? If the lawyers told him that, they persistently deny it, and their testimony isn't to be trusted. If they didn't tell him that, he must have been having hallucinations. Now, I don't know, and I am not familiar enough with that type of particular insanity. I have seen the type of insanity where a man gets some big ideas like the Moscow

trials, and everybody that he contacts knows he has a quirk on Moscow trials, or whatever it is. [316]

I personally think, and still think, that at the time the defendant executed the agreement he was of unsound mind, that the agreement was not fairly entered into under the circumstances, that there was undue influence and over-reaching on the part of the plaintiff in obtaining this agreement, and whether the overreaching was directly or indirectly through the defendant's attorney doesn't make any difference in this type of agreement. This isn't an ordinary contract. This is an agreement between a husband and wife, subject to the statutory presumption that it is valid, and every state has that presumption, and our own California Code says that the husband and wife may contract on certain subjects, and one of them is separation, subject to the provisions all through their relationships, that you can't have any overreaching in that kind of an agreement. I feel in this agreement there was an overreaching as to an incompetent person, and that he was taken advantage of, sorely taken advantage of, and to enforce this agreement under this evidence would be a gross injustice.

Thank you, your Honor, for your kind consideration.

The Court: On the present motion for a new trial the court has been unable to discover any newly discovered evidence presented on this motion which would change or warrant the court to change its conclusion at the close of [317] the trial. The

court reached its conclusion at the close of the trial that the defendant here now involved was competent, that he was represented by counsel, that both sides were, and that the agreement which they made and which is involved in this action was valid and binding on the parties. There is no reason presented to the court at this time why the conclusion reached at the close of the trial should be changed. The situation appears to be the same on this motion for a new trial, so far as this record is concerned. That being the conclusion of the court now, the motion for the new trial will have to be denied.

You will have to prepare a formal order.

Mr. Weber: Does the court desire a formal order or a minute order?

The Court: We generally do, as a practice, but the clerk's minutes will show it, I suppose.

The Clerk: I think the minute order is sufficient, your Honor.

The Court: Whatever the practice is. The order is now made by the court.

CERTIFICATE

I hereby certify that I am a duly appointed, qualified and acting official court reporter of the United States District Court for the Southern District of California.

I further certify that the foregoing is a true and correct transcript of the proceedings had in the

above-entitled cause on the date or dates specified therein, and that said transcript is a true and correct transcription of my stenographic notes.

Dated at Los Angeles, California, this 5th day of May, A. D., 1950.

/s/ MARIE G. ZELLNER,
Official Reporter.

[Endorsed]: Filed May 10, 1950.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the United States District Court for the Southern District of California, do hereby certify that the foregoing pages, numbered from 1 to 57, inclusive, contain the original Amended and Supplemental Complaint; Exhibit A to the Original Complaint; Substitution of Attorneys for Defendant; Stipulation and Order—Answer to Complaint to be Deemed Answer to Amended and Supplemental Complaint; Answer; Stipulation and Order Amending Complaint; Memoranda Prior to Trial (Defendant's); Motion by Defendant to Amend Findings and to Make Findings More Certain and Objections to Findings; Motion for New Trial; Findings of Fact and Conclusions of Law; Judgment for Plaintiff after Trial; Notice of Appeal; Designation of Points on

Appeal and Designation of Record on Appeal and a full, true and correct copy of Minute Order entered March 24, 1950, which, together with original Reporter's Transcript of Proceedings on March 7 and 24, 1950, and original plaintiff's exhibits Nos. 1 to 13, inclusive, and original defendant's exhibit A, transmitted herewith, constitute the record on appeal to the United States Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing and certifying the foregoing record amount to \$2.00 which sum has been paid to me by appellant.

Witness my hand and the seal of said District Court this 23 day of May, A. D., 1950.

EDMUND L. SMITH,
Clerk.

[Seal] /s/ THEODORE HOCKE,
Chief Deputy.

[Endorsed]: No. 12555. United States Court of Appeals for the Ninth Circuit. Leonard Woynicz, also known as Leonard Woynicz Sianozecki, Appellant, vs. Alexandra Woynicz, also known as Alexandra Woynicz Sianozecki, Appellee. Transcript of Record. Appeal from the United States District Court for the Southern District of California, Central Division.

Filed May 24, 1950.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the
Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 12555

ALEXANDRA WOYNICZ, also known as ALEX-
ANDRA WOYNICZ SIANOZECKI,

Appellee,

vs.

LEONARD WOYNICZ, also known as LEONARD
WOYNICZ SIANOZECKI,

Appellant.

APPELLANT'S
STATEMENT OF POINTS

To the Clerk of the above-entitled Court:

Appellant designates the following as points to be relied upon in taking this appeal:

(a) That the agreement sued upon is contrary to public policy and unenforceable at law or equity;

(b) That the Amended and Supplemental Complaint does not state facts upon which relief can be granted;

(c) That the evidence is insufficient to support either the findings or the judgment;

(d) That the trial court erred in finding as to mental condition contrary to the uncontradicted testimony of an expert;

(e) That the trial court erred and failed to

recognize the shifting of burden of proof on prima facie incompetency being shown by husband;

(f) That the court erred in failing to require plaintiff to show that the purported separation agreement sued upon was fair and reasonable and not obtained by fraud, duress, or overreaching;

(g) That the findings are insufficient to support the judgment;

(h) That the findings are objectionable in that they are too indefinite and do not comply with Rule 15, FRCP;

(i) That the court erred in failing to consider common law and statutory presumptions regarding the invalidity of transactions between husband and wife;

(j) That the court erred in refusing to consider common law and statutory distinctions between total insanity and unsoundness of mind;

(k) That the court erred in refusing to consider the effect of defendant's letter of rescission;

(l) That the court erred in refusing to grant a new trial;

(m) That the court erred in refusing to amend findings and in refusing to make findings more certain;

(n) That the court erred in that unmerited inferences were drawn from the evidence as to the

effect of payments by husband during period of incompetency.

Dated May 29, 1950.

/s/ JERRY B. RISELEY,
Attorney for Appellant.

Affidavit of Service by Mail attached.

[Endorsed]: Filed June 2, 1950.

[Title of District Court and Cause.]

APPELLANT'S DESIGNATION OF
RECORD ON APPEAL

To the Clerk of the above-entitled Court:

Appellant designates as portions of the record, proceedings and evidence to be contained in the record on appeal, the following:

- (a) Amended and Supplemental Complaint;
- (b) Substitution of Attorneys—defendant;
- (c) Stipulation—Answer to Complaint to be Deemed Answer to Amended and Supplemental Complaint;
- (d) Answer;
- (e) Stipulation Amending Complaint;
- (f) Entire Exhibit A of Complaint;

- (h) Findings of Fact and Conclusions of Law;
- (i) Motion by defendant to Amend Findings and to Make Findings More Certain and Objections to Findings and Minute Order denying same;
- (j) Motion for New Trial and Notice of Motion for New Trial and Minute Order denying same;
- (k) Reporter's Transcript of Proceedings, pp. 1 to 318, incl.;
- (l) All exhibits introduced in evidence including all depositions;
- (m) The Judgment;
- (n) Notice of Appeal;
- (o) This Designation;
- (p) Appellant's Statement of Points on Appeal; Notice of Appeal; Clerk's Certificate.

Dated May 29, 1950.

/s/ JERRY B. RISELEY,
Attorney for Appellant.

Affidavit of Service by Mail attached.

[Endorsed]: Filed June 2, 1950.